

# AN INTERVIEW WITH MILTON BADT

Interviewee: Milton Badt

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## Description

Milton B. Badt, associate justice of the Nevada Supreme Court, was a member of a pioneer Nevada family. His father, Morris Badt, was one of the state's early merchants, arriving in Elko County in 1868. At Wells, in Elko County, the elder Badt founded a mercantile business that expanded to include banking facilities for the people of the surrounding area. The family also engaged in cattle ranching.

The future judge was born in 1884, one of a family of eight children. He received his education in Nevada and California schools. The young Badt was just completing his college work at the University of California at the time of the San Francisco earthquake and fire in 1906. After his graduation from Hastings Law School, Milton Badt began his life's work in Nevada. He practiced law in Elko County, becoming involved in a number of interesting irrigation, mining, livestock and Indian claims cases. He became a district judge in Elko County in 1947. The same year, a vacancy opened on the state supreme court, and Badt was appointed to the higher tribunal.

Mr. Badt presents biographical material about his father, with extracts from Morris Badt's diary kept during the notorious hard winter of 1889 to 1890; reminiscences about his education and observations on education practices; a description of the San Francisco earthquake and fire; discussions of some of the outstanding legal cases upon which he worked; material concerning practices of the state supreme court; and a philosophical summary.



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An Oral History Conducted by Mary Ellen Glass

University of Nevada Oral History Program

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## PREFACE TO THE DIGITAL EDITION

Established in 1964, the University of Nevada Oral History Program (UNOHP) explores the remembered past through rigorous oral history interviewing, creating a record for present and future researchers. The program's collection of primary source oral histories is an important body of information about significant events, people, places, and activities in twentieth and twenty-first century Nevada and the West.

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While taking great pains not to alter meaning in any way, the editor may have removed false starts, redundancies, and the “uhs,” “ahs,” and other noises with which speech is often liberally sprinkled; compressed some passages which, in unaltered form, misrepresent the chronicler's meaning; and relocated some material to place information in its intended context. Laughter is represented with [laughter] at the end of a sentence in which it occurs, and ellipses are used to indicate that a statement has been interrupted or is incomplete...or that there is a pause for dramatic effect.

As with all of our oral histories, while we can vouch for the authenticity of the interviews in the UNOHP collection, we advise readers to keep in mind that these are remembered pasts, and we do not claim that the recollections are entirely free of error. We can state, however, that the transcripts accurately reflect the oral history recordings on which they were based. Accordingly, each transcript should be approached with the

same prudence that the intelligent reader exercises when consulting government records, newspaper accounts, diaries, and other sources of historical information. All statements made here constitute the remembrance or opinions of the individuals who were interviewed, and not the opinions of the UNOHP.

In order to standardize the design of all UNOHP transcripts for the online database, most have been reformatted, a process that was completed in 2012. This document may therefore differ in appearance and pagination from earlier printed versions. Rather than compile entirely new indexes for each volume, the UNOHP has made each transcript fully searchable electronically. If a previous version of this volume existed, its original index has been appended to this document for reference only. A link to the entire catalog can be found online at <http://oralhistory.unr.edu/>.

For more information on the UNOHP or any of its publications, please contact the University of Nevada Oral History Program at Mail Stop 0324, University of Nevada, Reno, NV, 89557-0324 or by calling 775/784-6932.

Alicia Barber  
Director, UNOHP  
July 2012

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## INTRODUCTION

Milton B. Badt, Associate Justice of the Nevada State Supreme Court, was a member of a pioneer Nevada family. His father, Morris Badt, was one of the state's early merchants, arriving in Elko County in 1868. At Wells, in Elko County the elder Badt founded a mercantile business that expanded to include banking facilities for the people of the surrounding area. The family also engaged in cattle ranching.

The future judge was born in 1884, one of a family of eight children. He received his education in Nevada and California Schools. The young Badt was just completing his college work at the University of California at the time of the San Francisco earthquake and fire in 1906. After his graduation from Hastings Law School, Milton Badt began his life's work in Nevada. He practiced law in Elko County, becoming involved in a number of interesting irrigation, mining, livestock and Indian claims cases. He became a district judge in Elko County in 1947. The same year, a vacancy opened on the State Supreme

Court, and Badt was appointed to the higher tribunal.

The oral history recorded by Mr. Badt includes biographical material about his father, with extracts from Morris Badt's diary during the notorious hard winter of 1889-1890; reminiscences about his education, and observations on education practices; a description of the San Francisco earthquake and fire; discussions of some of the outstanding legal cases upon which he worked; material concerning practices of the State Supreme Court; and a philosophical summary.

Milton Badt was chosen to be interviewed for the Oral History Project of the Center for Western North American Studies because of his and his family's interesting background of business, ranching and legal work. There were two recording sessions, May 13, and July 12, 1965, both in the Justice's office in the Nevada State Supreme Court Building in Carson City. Mr. Badt accepted the invitation to record his memoirs graciously, and was a cooperative interviewee. He was unfortunately unable to

review his oral history before he passed away in April, 1966.

The Oral History Project of the Center for Western North American Studies attempts to preserve the past and the present for future research by recording memoirs of persons who have played important roles in the development of Nevada and the West. Some other oral histories in process concurrently with Mr. Badt's included an educational reminiscence by Earl Wooster, Nevada teacher and administrator for over forty years; a social and political autobiography by Thomas W. Miller, nationally known Republican political figure; a social and economic memoir by Lester J. Hilp, Reno businessman; a political, economic and social discussion by Charles H. Russell, former Governor and Congressman from Nevada; and a social, educational and economic history by Silas S. Ross, former University of Nevada Regent.

Permission to cite or quote from Milton Badt's oral history should be obtained through the Center for Western North American Studies.

Mary Ellen Glass  
University of Nevada, 1965

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## EARLY DAYS IN NORTHERN NEVADA

I made some time ago an extract from Thomas Wren's *History of the State of Nevada*. He says that my father, Morris Badt, first came to the United States in 1847, when he came to New Orleans. That, of course, is entirely hearsay as far as I'm concerned, but I guess we'll get a lot of hearsay into this. Herodotus and Thucydides and the rest of them used a lot of hearsay in their histories, I know. Well, Morris Badt arrived in New York, went at once to New Orleans, and was apparently there from '47 to '51 when he went to San Francisco. There, he started a business at the corner of California and Leidsdorff Streets. My 1857 San Francisco directory places him at that time in business on Commercial Street; in the 500 block of Commercial Street. That's pretty close to California and Leidsdorff, and was very close to the old Fort Gunnybags, the headquarters of the vigilantes in San Francisco at that time. He was in business in San Francisco apparently about from 1862 to 1868.

He had come from a little town in Germany by the name of Sversen which was

a suburb of Posen. Posen at that time was part of Prussia. Some years ago when I went to Germany, I had a hard time locating the town of Sversen. I now realize that it had been absorbed into Posen, which was quite a large city.

Then apparently in 1868 he went to Elko and he engaged in business there with a firm named Badt and Cohn. Cohn was his partner. Mr. Cohn never came up to Wells. He stayed in Elko. Then that partnership was dissolved very shortly afterwards. Now that was the year before the construction of the railroad through Elko, so Elko must have been, and I understand was, a tent city at that time. In Elko he was later associated with a brother Alexander Badt, but Alexander Badt drew out of the business entirely.

At that same time, he had established a branch in Wells some fifty miles east of Elko and about half way between Wells and the Utah line. Then in 1875 he sold his business in Elko and restricted himself to the business in Wells. In doing that, he traded back to the firm of Russell and Bradley a large cattle ranch

which he had taken in payment for the store. Then he went to Wells.

My father built the first brick building in Wells. Later, when I went up there as a boy, he extended that. It was a building about twenty-five by a hundred and he extended it another fifty feet. That business was a most unique one. There was that main store, and there was a sugar cellar, and a coal-oil cellar, and a warehouse for keeping flour and a warehouse for keeping the machinery, and another warehouse there, and a lumber yard. They raised a great deal of grain in the valleys at that time, and they raised very fine oats. The race tracks in California were just crazy to get the oats that we raised in Nevada, so we shipped carloads of oats down to San Francisco. And flour and barbed-wire. Then there was a lumberyard full of lumber and that stuff was wholesaled to Deeth, Montello, Cobre, Ely, Salmon River in the northern part of the county, and all over. That was before the construction of the Nevada Northern Railroad from Cobre to Ely.

There was another brick building in Wells owned by the two Quilici brothers. Another man by the name of A. W. Goble built a good store there, too.

All freight was taken by the large freight teams. The largest one that I ever saw in Wells was eighteen horses. They used to refer to them as twenty-horse freight teams. The driver sat on one of the wheel horses, and then there were the two pointers on the end of the tongue, and the two leaders. They drove the team with what they called a jerk line, with a steady pull turning them one way, and the jerking line turning them the other way. And those leaders and the wheelers and the pointers were almost human in their knowing what to do. There were five or six wagons in a string. Then there were heavy brakes, and a large leader came up from the axle. The

driver riding the horse also had a rope on that leader so that he could throw the brakes on and stop them.

At that time, the mines at Cherry Creek were running, and the mines at Ely, and some of the mines at Spruce Mountain. For example, the wagons would go down with the various loads of groceries and materials and sometimes with coke—coke particularly—for the smelter at Spruce Mountain. These wagons had side boards, as I recall them, seven or eight feet high. And the coke, a very light load, would be up to the top of those side boards. They would come back from Spruce Mountain with ingots of lead silver which were only maybe twenty-four inches long, and about four or five inches wide, and two or three inches high, and yet they weighed over a hundred pounds apiece. So a load of that silver was just one layer on the floor of these wagons that went up with a seven foot load.

We also had mail by stage then, entirely. It went the same route from Elko, down through Clover Valley, Spruce Mountain, Cherry Creek and Ely. There were times when we had to run the freight line when others would quit these freight teams as drivers. They were men who liked their liquor, and every once in awhile they would have enough of it that they got on a big drunk and laid off for awhile. So we had to take over then.

I remember one of these drivers by the name of Don Crawford. He was a famous driver and a famous drinker. There was a telephone pole at the corner of the main street where he made the turn to go out to Clover Valley, and I saw him catch that telephone pole with one of the wheels of his wagon as he was trying to make that turn. You see, to make a turn, these eighteen horses would have to take a wide swing out to get around the corner and if he cut it a little too close, he might take a telephone post out! And there

was a great hoorah for awhile. There was no one as famous as Hank Monk, who drove the stage around Carson City.

Wells was a very primitive frontier town at that time, and my father had a very lonely life there. This was before he was married. And after his marriage, he built a house for my mother in San Francisco where she raised a family of four boys and four girls. My father's social life was nil in Elko County. There were no educational facilities, no cultural connections or any kind in Wells at that time, and no central heating in the buildings when I went there later, in 1897. It was quite an innovation when we imported a bath tub there. We used to have to heat the water on boilers on the kitchen stove, and carry that into the bathroom and pour it in. But we later established a full set of plumbing in the house, and we were able to get pretty good baths.

Now in Elko there were very few Jewish families outside of myself. There was the Edgar Reinhart family, and an old lady by the name of Mrs. Englert. She had a nephew, a dentist, by the name of Caesar Alexander, and Seymour Jacobs' wife was her niece. I think she had a grandniece; I forget her name. And outside of that I don't know any Jewish families in Elko. All the time that I was there, there was nothing like a Jewish community while I was in Elko. But there was no prejudice against Jews, as far as I could see. I know I was treated with the greatest consideration. I became the Master of my Masonic Lodge, the Exalted Ruler of my Elks Lodge, the president of the Chamber of Commerce, this, that, and the other; so I was shown every consideration. There was never any example of prejudice against me as a Jew, and I think against my father in Wells, or my brothers. My father had the respect of everybody. In later years even when I had been down in Carson City, someone would drop in who knew my father.

George Russell just told me the other day, "Your father was the best-loved man in Elko County." Everybody had good to say about him. He was a very kindly man.

Well, as I say, my mother was raising those eight children in San Francisco. My father came to San Francisco two or three times a year mainly on the Jewish high holidays; the day of atonement, which is Yom Kippur; and the Jewish New Year, which is Rosh Hashana; and sometimes on Shabouth, which is the Feast of Weeks. My mother and father were Orthodox Jews and came from Orthodox Jewish families.

I was going to school in wells, I think from 1897 to 1899, because I graduated from Lowell High School—a three-year course—in 1902. So if my arithmetic is right, 1897 was the year I arrived. My next older brother Selby didn't arrive until the following year, 1898. And my father died in 1899. Now my eldest brother Dial was originally slated to study and practice law. He was a man of brilliant mind. But about 1889, my father needed Mel in the business, and he was called to Wells. He arrived there on the first of January in 1890.

You may know that the winter of 1889 and 1890 was known as the hard winter here. I have my father's diary here and it's almost too sad to read. He bewails the absence of his family, and the hard times. During that hard winter of 1889 and '90, his diary shows that it snowed day after day, deeper and deeper. Then finally after four or five days of melting, the first stub train arrived from Reno. So they didn't even have any mail connections with the rest of the world.

Before I go into the operation of his business, I want to tell you of one event following that hard winter. Many ranchers came in and said, "I'll give you a deed to my property. I can't pay you anything, and all I can do is give you my property."



And my father said, "What use will these ranches be to me? What I want to know is what you'll need to get back into the livestock business." And he had interviews with many of them. The hay was gone, and the livestock. Oh, I suppose the loss had been 90 % at that time on account of the cold and snow and the lack of feed. And they told him about what they needed, the expenses of the next season, the replenishing of the herds, what she stock they needed to raise cattle again. He went down to the Bank of California, where Frank Anderson was the president. The ranchers were reinstated. The bank asked my father. "How much do these people need?" Father had it down in black and white what each rancher needed. He could carry them to some extent, but he needed considerable help from the bank, and it was done. It was arranged and they came back. Ruby Valley, Clover Valley and Star Valley, which were the main valleys around Wells, case back into full cattle operation.

Now, during the years, and the years later, and even the years in which I was familiar, since from about 1897, my father was there. By that time, my oldest brother, Mel, was with him; I think also my second brother Herbert who came up in 1895. Herbert, besides being a keen businessman, was a wonderful musician who played a beautiful violin. My next eldest brother, Selby, came up in 1898 the year following the one I came up. He stayed in San Francisco to finish his high school course at Polytechnic High.

As I knew the business from then until later years, my father acted as sort of a fiscal agent and banker for many, many of the ranches around Ruby, Clover, and Star valleys. He paid their taxes, he paid their insurance, fire insurance, life insurance. He paid the interest on their land contracts, because in those days they were buying land from the

State at a \$1.25 an acre under deeds, and patents passed to the State from the Federal Government. That land was not taxed, so it was cheaper to carry the contracts out and pay 6% interest rather than get the deeds; pay the extra dollar an acre, pay 8% to the bank, and in addition to that pay taxes on the lands. So for many, many years these ranchers all carried much of their land on state land contracts. And my father paid their interest and kept them up and saw that none of them went delinquent.

Besides that, they would draw little checks on little slips of paper, and send them in with one of their laborers who would help them with the haying or something say, "Pay John Jones a hundred dollars." It was so irregular and sloppy in effect, that finally the business issued regular bank books addressed to M. Badt, and later to M. Badt and Company after my brothers vent in. Just regular check, "M. Badt & Company, pay to the order of John Jones twenty-five dollars," and signed by the rancher. And finally—this was very much later—the bank examiner came around and said, "You people are running a bank without a license; you'll have to get a license for a bank."

And again they went down to the Bank of California in San Francisco. The president of the bank asked them many questions, how much deposits did they think they would get and so on, and said, "Well, we'll lend you half of the capital, and you get the other half of the capital purchased by the ranchers around." And we did, and started a bank that ran successfully for many years until it closed up when the bank was closed, every depositor received his money in full.

Now, as far as politics were concerned, my father was very widely consulted on candidates for office; state as nil as county office. And he was urged on many occasions



to run for office, but he never would. He said that politics and business didn't mix, and a businessman had no place in politics. Well, whether he was right or not, I don't know. I know my brother Mel was the County Republican Chairman for a number of years there, and he took quite an interest, but he also refused to accept any nomination for political office. And personally, I never held any political office except as a member of the School Board for many years, and now this position on the supreme bench here. But I never had to run, as I never had any opposition for the renewal of my terms, so I've hardly had any experience in politics.

Now speaking of the politics of the County, the Henderson Banking Company—Charlie Henderson, son-in-law of W. T. Smith, and John Henderson and his brother, and two other brothers—ruled the Democratic politics of the County with rather an iron band. Henderson Banking Company held mortgages on many people in Elko County particularly along what is known as Lamoille Valley, the north fork of the Humboldt River, the south fork of the Humboldt River, Owyhee and so on. These are all large valleys with prosperous ranches, and the ranchers pretty well had to do Henderson's bidding. So the economics and the politics of Elko County were pretty well handled by Henderson Banking Company at that time.

Now, as I say, I went to Wells in 1897, graduated in 1899, and went back to San Francisco to attend Lowell High School. And my family lived up there the same time for quite awhile. I think those two years after we came up were the two happiest years of my father's life, and probably the only two happy years. He was a man devoted to his family and his wife and his children. I know on his visits to San Francisco, my next elder brother Selby and I used to fight over who would sit next to

him at the table, and so on. You can imagine the table with eight children there! And he was very much devoted to his family and his worry was continually, when can I live with my family?" He deplored the separation very much. His connections were restricted to two or three visits during the year.

My people ran a fairly large cattle outfit on Bishop Creek and Johnson Creek, Burnt Creek and Trout Creek all north of Wells, and we had several hundred head of cattle; no sheep at all. My brother Selby was the manager of that outfit.

I mentioned that my oldest brother Mel arrived in Wells, January 1, 1890. That's right in the middle of the "hard winter" and the losses were terrific. I might say that up until that time, the cattle men had made no preparation for feeding their stock all winter. They let them run out in their range, pushing them south if they could, to winter range. But for the most part, they just ran out. This was the first time that they woke up to the fact that they had to do something different.

So then they started raising hay to feed them in winter. Then those ranches gradually grew up to what we recognize as complete cattle units where they had, say, a thousand head of cattle, a thousand acres of hay land on which they could raise a thousand tons of hay. It took just about a ton of hay to feed a cow through the winter. So we had a thousand cattle, a thousand acres, and a thousand tons of hay. That's something we could not make the government agencies, either the Department of Agriculture in charge of forests or the Department of Interior in charge of the public lands, realize. We had to have a complete unit. We had to have our own property on which we raised our hay. And of course, they had to raise other vegetables to support the family, and they had to have their cattle, they had to have grazing land on

which they could graze in the summer. It was very seldom that a man could afford to buy his grazing lands. Those were the public lands that they used, supplemented by railroad lands that were leased.

The banks realized that, too. To have a complete security for a cattle loan, the borrower had to have his ranch, his cattle, his hay lands in which he raised hay to feed them in the winter, and his range lands winter and summer. Without that he didn't have a complete unit. If he didn't have that, the banker would be very loath to make a loan. Of course at the time of the Great Depression in 1929, '30, '31, the banks had been lending too much money on cattle per head and sheep per head, and the banks were all in the hole. The state bank examiner sue us close up all of our state banks. The federal bank examiners made us close up our federal banks. It was a difficult time.

Now, I was attorney for the First National Rank in Elko, and we said to the bank examiner, "Well, here, our capital is intact here there's no reason why we should close. We're ready to open our doors; people can draw out as much as they want." But that wasn't satisfactory. The federal bank examiners for First National insisted that we issue and sell a preferred stock "because your capital has been impaired. The mortgages securing your loans have been depleted in value. Your livestock has certainly depleted in value; you haven't got the livestock. The people have lost their livestock." And they said the same thing to the Battle Mountain State Rank.

The Battle Mountain State Bank was a peculiar bank there; it was run by an old Battle Mountain family and I think outside of two mortgage loans it had all of its assets in Class A stocks. They were all blue chip stocks. It was a bank running on practically no expense of any kind, money coming in as dividends on

these stocks all the time, and plenty of money in the bank to pay off if somebody wanted their money. That was a state bank and the state examiner said, "No, you've got to take advantage of this bank holiday the Governor has declared and close the bank until we get squared around."

The Henderson Bank, of course, was part of the Wingfield "string" at that time in Elko County. They had just got through a period of extreme drought in addition to the depression. They had shipped the cattle mainly to Colorado on pasture there, for pasture and feeding. They had taken over, they had a right as mortgagee to take over the mortgaged cattle, put them on the cars, and ship them to Colorado. Well, I don't know how much a head the loans ran to, but eventually it was a very unsuccessful operation. The expense and the feed did not pay out the value of the cattle. A lot of the people greatly resented the action of the banks, and particularly the Henderson Bank Company up there.

We ran on a pretty tight schedule in the cattle business. You would turn your cows and calves out in the spring. As the lower grasses were used or dried up, we would push the cattle higher up on the range. We would have a branding rodeo. Later on in the fall, we would have a beef rodeo. Then later, depending on the weather, we would bring the cattle under fence. Cattle can stand very cold weather if they have feed; and as I say, after the hard winter of '89 and '90, the cattlemen observed a different method of handling their cattle in winter. Well, the only income they had was the sale of beef in the fall. In the early days, they sold three-year-olds. The public doesn't want the great big porterhouse steaks that we used to like. They like little T-bones or little New York cuts, little filet mignons and so on. But there, the only income they had was in the fall when the beef buyers came in and

bought the beef . So here they had a whole herd of cattle in which their investment was lodged: the breeding stock., the she-cows, the she-stock the bulls, and then they had calves, the yearling steers, the two-year-olds, the three-year-olds. All of that large herd was maintained just by their sales of their beef in the fall: the two-year-olds, the three-year-olds. And when the beef buyers used to come in and say, "Well, we'll pay you six cents a pound for your beef." That was a good price. If they came in late, we'd have to hold them, and often the hay was giving out. The economics in the cattle business were rather precarious.

Now the sheepmen, on the other hand, had two pay days. In the spring, they would lamb and they would shear. That is, the ewes would have their lambs and they would be shorn and the wool would be sent to market. And then in the fall, they would sell the lambs and keep the ewe lambs to build up the herds. They sold only the weather lambs. They had it a little better in the practice of economy, and they didn't have big investments in arable lands, and in raising crops. Until we finally stopped it, they used to come; and the bands of sheep used to come down from Idaho, range in Elko County and for awhile they didn't even pay taxes in Nevada. Eventually, they'd go back to Idaho and the sheep were held over there. But then when we finally took care of them under our trespass laws and in other ways, why, the sheepmen were compelled to pay the taxes. The sheriff and the assessor would go out on the sheep ranges and here's a bunch of sheep, "Have you paid your taxes in Elko County?" "Well, we'll pay them next week." "No, you'll pay them right now." "No tengo dinero; I have no money; I can't pay them now." "Well, I think we'll need about a hundred sheep to pay your taxes." And they would take a hundred sheep and run them down into Elko, the county seat. So eventually,

the sheepmen got used to paying their taxes, and there were laws passed so they could pay a proportionate amount of taxes for the time they were in the state and the county. So that worked out pretty fairly.

In the cattle business, as long as you could get six cents a pound for your steers, you were all right. You know now they can't make money on them unless they get thirty five or forty cents a pound on the hoof . But as long as you could get six cents a pound for your steers, your losses would be covered by your increase and the cattlemen could persevere, and they could make money, maintain, and gradually build their herds larger and larger. The cattle industry was the backbone of Elko County, and of the State. Mining hasn't been the backbone of our economy here now for a long time. Elko was the cow county of the State. We've always been pretty proud of Elko County as a cow county.

We used to raise fine horses there, too; fine saddle horses. The Government started in making a new stock by bringing in Government stallions, thoroughbred and purebred stallions. They would be bred to range mares. The ranchers raised a bunch of polo ponies and cow horses from that stock. They would put a stallion here and a stallion there, and so on. The mares would be bred to these stallions and have fine ponies.

The counties would have regular, annual fairs. These colts first ran the two-year-olds' races, then the three-year olds ran in the regular county fair races. These colts ran in good time

Some places I ran into, they raise better horses than others. Of course, on the ranches, they had sires and the various heavy grades of horses for ranch horses, and they raised beautiful work horses there. Then in some parts of the country, the horses that ran out on the range all year had small feet. Their hooves

were ground down. They made beautiful saddle horses. They were good saddle horses; they made good time, and were wonderful cow ponies.

My brother in Reno now has a horse that won the derby in Elko thirty-one years ago. The horse is thirty-four years old, which is equivalent to about a ninety year old man, I guess. He babies that horse! I think it's a record, probably. I know he's going to grieve when that horse dies.

Now Spruce Mountain started up about 1902. Charles M. Spence, a mining engineer who had been active in Ely, wanted to develop Spruce Mountain. It was Spruce Mountain Mining District. Now Spruce had been operated in early years in the '70's by Andrew Harrell, who was a partner with Governor Sparks. He owned with Sparks the Sparks-Harrell Ranch north of Wells. They owned the famous Winecup brand and the Shoesole brand, and one other. They had three irons. Harrell had been running a smelter at one time on the other side of Spruce Mountain, the east side, and how successfully, I don't know. But they also shipped a lot of ore out of there, and Spence wanted to develop those mines. He acquired the property, and in 1902, he came to my brothers. We wanted them to finance putting up a little single unit smelter and he needed, I think, four thousand dollars for that. We went in with him on that thing, and he did build that smelter. He ran it from 1902 to 1908.

All the experts said you couldn't run a small unit smelter like that, it would freeze up on you. But he did, and it worked successfully. It was just like a big iron stove, only it was seven or eight feet in diameter. If you looked through the peep-holes, you could see the oil melting and the little drops of lead silver percolating down through the coke and wood, and stuff coming down. Then they would

tap that; it would run into a little mold, and then close it up again. The holes were closed just with clay and they would tap it on the other side just with a long pole; poke the clay out, and the slag would run out. When it was running at night, it would light up the whole canyon for miles. Now, it had to run continually because if you ever let it cool off, then there was this whole bunch of lead silver ore at the bottom, a solid mass. There was no way to get it out except to chisel it out. And that was a terrific task. You couldn't let that smelter stop for a moment. I remember how careful Spence was. The wheelbarrow full of ore to dump in and a wheelbarrow full of coke. Each one was weighed on the scales first to the proper weight to the pound before it was dumped into the smelter.

By the way, Spence was a former resident of Carson City. His house is still standing there; a red brick house. He was essentially a copper man, and whenever he would get ten, fifteen, twenty thousand dollars from his smelter receipts from lead, he wanted to put it back for the development of copper again. And he actually excavated a four hundred-foot shaft, a vertical shaft, in pursuing the copper, because the country rock up there is all lime. And then there was a porphyry intrusion into the lime. In the contact between the porphyry and the lime ordinarily was where the ore made. He had cut the two contacts, the north and the south contacts, at the surface; he had cut both contacts at the six hundred foot level. Each showed the values had leached downward through downward percolating waters. Spruce Mountain was considered to be an ideal company for secondarily enriched ore. There were no streams flowing out of the mountain at all, despite the fact that there was a very heavy snow fall, so it had to go somewhere. It leached down through the porosity of the country. So for this four

hundred foot tunnel, he ran a short distance and out the north contact with a line; and it was bare. He ran out two thousand feet to cut the north contact and never reached the north contact. He had to give it up then. But he and other people have always looked for big copper mines, and spruce Mountain has never been opened up.

Well, of course, there are other mining districts all around Wells and they were all supplied by M. Badt & Company, too. Salmon River, later known as Contact, and the whole country around Salmon River was part of the Sparks-Harrell holdings, later known as the U. C. Company, and later sold out to a couple of people known as Wunderlich and Wilkins. The town out there was named Wilkins later. For a while, there was a very successful mining camp there at Contact, or Salmon River.

Now, the Ely district was developed within this time, too. The big pit operation started there, and we supplied Ely with the supplies to run their mines. And the Ely ore and the Spruce Mountain ore were for the most part hauled to Wells, or after the Western Pacific was constructed in 1907, was shipped via Tobar to the Salt Lake smelters.

In Elko, I was a bachelor until I was forty years old, and I suppose I led a typical bachelor's life. I lived at a place, a little club of a bunch of fellows up there, a bunch of bachelors, with a Mr. and Mrs. Gheen. We called it Gheen's Table. I don't know whether you get the allusion in there, Gheen's Table or Gheen's Stable. Either way, it was quite a stable! We had a very fine relationship then. They were very fine fellows, who either lived there or ate there. Mr. Gheen and his wife had come in from Lamoille Valley.

My father had an Indian ledger and my brothers carried it on, too. They had a separate ledger for Indians. I don't think we ever lost

any money on the credit extended to Indians. They all came in eventually. They worked on some of the ranches during the summer. Some would borrow money and then wait until they could earn enough during haying. Many of them were good horsemen. We used to have them working for us breaking horses.

As a rule, each cow-puncher had to break his own horses to ride. Each cow-puncher would have maybe a string of five or maybe six horses. Tracy would go out in the morning, work on cattle, and come back. Branding, and so on. Then they would get a fresh horse. Of course, now a lot of the romance has gone out of it. They brand in chutes; they run the animals up into a chute, pull it tight and squeeze them, and brand tries, vaccinate them, mark their ears, all at the same time. In the old days, we just ran maybe twenty or thirty cows and calves into a corral and roped a calf by his hind legs and dragged him up to the fire. Your assistant would jump on the calf; sit on his head and hold him down while somebody else went for the iron and branded him. The bull calves were always castrated, and they were headed off and a brand put on them. Sometimes the calves were too small to brand and then they would turn them loose for later branding and the fall rodeo. Those were the calves that were often stolen; the big calves, unbranded. Slick ears, we used to call them because when they were branded they were ear-marked also.

Many a time, I've seen the cow-puncher ride into town after a hard day's rodeoing up at the rodeo camp north of Wells and shoot out the lights, and ride into a saloon and shoot out the lights. It was just sort of a playfulness. They didn't do any very great harm.

Yes, we had an Indian camp. Every little town here had its Indian village outside of it. We had an Indian village at Wells, and there was an Indian village at Elko. We got along



very well with the Indians and they're good people, except when they get drunk. They have an addiction to alcohol. They used to come in the store to buy Jamaica ginger and lemon extract that they would drink. That had alcohol in it, you see, and there was no statute that said you shouldn't sell that to Indians at the time. I remember an old Indian that used to come in there all the time. Mustache Jim, we called him. He had three or four hairs sticking straight out under his nose, so he had the appellation of Mustache Jim. He would come into the store and say, "You catchem 'maica ginger?" If we didn't have any, we would say, "No." And he'd say, "You catchem 'emon?" It was hard for him to pronounce "I". He would buy a few bottles there.

The Indians would divide their shells and their lead. For the most part they made their own bullets. We used to sell these pieces of lead about seven or eight inches long to them. It was regular commodity. But they discovered that when you bought the lead it was cheaper if in shot. We had a shot case there. You opened a little lever and the shot, ranging from an eight point, a very small shot, up to a B-B, would pour out into a bag. And the Indians found out that a pound of shot cost less than a pound of lead. So they would buy that and melt it down into the bullet molds.

I had some very good friends among the Indians and some of them were well educated. Harry Preacher was the leader of the Indians in Elko County. At that time, a man by the name of Johnson Sides was the leader of the Shoshones in the State. They were good friends of mine, both very able people. I remember a young fellow by the name of Tommy Waynie. He was about my brother Herbert's age, and they were great pals. He was well-educated and he wrote a beautiful hand. I remember him saying once, "Herb, let's you

and I get dressed up and go to New York and put on a real party there." They didn't do it.

When my oldest brother was married he married a girl by the name of Della Tobriner who lived in Oakland, and who used to live in Carson City. She should have known Indians pretty well, but when she went up to Wells to live, sometimes Indians used to come around the kitchen door and stand around and stare there. And she was terrified of them, and she telephoned over to the store. But all they wanted was something to eat, you know. After that, she got along fine with them. In fact, one worked for her continuously for many years; Mattie, who became known as Mattie Badt. They took the names of the people they worked for.

The old Indians were a roving people, they moved north and south through the seasons. They hunted and they fished, and generally they observed what was tried to be enforced by our game laws. Namely, they killed only the bucks when they were deer hunting, they didn't kill does. They confined their fishing pretty well to the seasons of fishing, recognizing our game laws. And a very large portion of their diet was a meal made from pine nuts. They ground up these pine nuts to make meal and soup and food of various kinds.

The Shoshones didn't have many arts other than basketry and they were pretty good at that, for all purposes. Some of the baskets were sealed with pitch and resin so they could carry water. They made their water jugs out of them. They were good at making clothes out of buckskin; they would tan the hide of the deer. The Shoshones lived also on rabbits to a large extent.

Some of the earlier historians coming down the Humboldt River rather despised the Shoshone. They said they lived on grasshoppers and squirrels and things of that kind.

I think they were rather a lovable people. Some of them became personal friends of mine, and I admired them greatly.

They told me some of their stories. They would tell of a tradition they had of some little men who lived in caves up by Fort Halleck. They would come out, and they were kind little people and they helped the Indians. Then they also had a tradition of some tremendously large Indians, veritable giants, who walked over the canyons. They believed that those existed. Of course, in a way, they believed in God, the great spirit. You wouldn't call them religious people, but they did believe in a supreme being. They had their funerals; they buried their dead in various ways, sometimes sitting up in caves. Sometimes they built platform. and put the body on top of the platform. The vultures would simply eat them up.

They were honest people. I told you that my father and brothers in Wells had a special ledger called the Indian Ledger. I doubt that we ever had a loss in credit advanced to an Indian. And then when I was practicing law in Elko, there were certain Indians who would come in every so often and borrow five or ten dollars. They always came in and paid it back. They kept their credit good with me, so they could get another five then they needed it!

I attended a fandango once in awhile. They danced sort of a shuffling movement from side to side to tom-toms and so on. They didn't have any picturesque dances such as are shown here from the students at Stewart Indian School by the Navajos and some Hopi Indians. The Navajo. have very picturesque dances, dances to the rain god to bring on rain. There were some war dances. They were, of course, in full feather dress with tomahawks in their hands and they would dance and shuttle and one would drum, drum, drum with his fingers, and sort

of chant, while the others were dancing. The Shoshones didn't have much of that. They had drums for rhythm. and that's about all. But it was as good as some that they play nowadays anyhow!

It used to take the Overland Limited twenty-eight hours to get from San Francisco to Wells. Every time we went to the Southern Pacific office to buy a ticket to Wells they said, "No, no we have no stop there. You'll have to wait and take one of the slower trains." And we would argue and argue with them, and finally we'd say, "They stop there, they've got to stop for water. They've got to go up this big hill to go over the Pequop Mountains, and they have to stop there. I've lived there for years and there's never been a passenger train that ran east through Wells without stopping. They put on a helper too." And finally they would sell us a ticket to Wells, and it would take twenty-eight hours to get there. Now it takes about four hours to get to San Francisco by plane and most people have never ridden on a train. They travel all over by plane.

In the early days, for most part, it was the saddle horse or the horse and buggy to get around. In Elko, we had Garcia, the most famous saddle-maker in the West. And then in Visalia, there was the Visalia Stock Saddle Company. Those were the two outfits that made the saddles. A cowboy would not buy any other kind of saddle except a Garcia or a Visalia Stock Saddle.

I remember the first automobile I ever saw in Wells. In 1907, my brother bought a Buick. It was chain drive, two-cylinder and the gas tank was in front, right behind the radiator. You cranked the engine on the side right by the front seat. Whenever you backed up, you had to make a turn. If you backed up into the sagebrush, the chain would come off and you had a dickens of a time getting it out of that back sprocket again. Then in 1908, they got a

never Buick which turned out better. In fact, we took the agency for that one Buick at that time. I think it was in 1909 or 1910 they finally turned out a car with an electric transmission and a gear shift, you see. That was a good car. And in 1912, the Buick turned out a big racing car with four great big cylinders; a four-inch cylinder and a five-inch stroke. It was a wonderful car, and I had it in San Francisco for a while. At first, I had a little car on the beach there. A number of people had made little cottages out of abandoned street cars, and then they would build a little extension on it and have two or three rooms. My chum and I had one of those. Then eventually, we bought a little house out there on the beach. That was 49th Avenue; that was the last street out there. We used to go out there every week-end and swim anti play around in the breakers.

I don't know of any special historical sites in Elko County. In Clover Valley there's a beautiful range known as the East Humboldt range of the Ruby Mountains. A very high range with many beautiful mountain lakes with good fishing. Upon that mountain is a very high ridge that makes quite a large basin, and near the top of that rocky ridge is a hole right through the mountain, a large hole and it's known as "Lizzie's Window." It has been known by that name for many, many years. That, I suppose, is a historical site. Lizzie was probably one of the early white girls of Clover Valley.

There is a historical point, not a monument, but a historical place that occurred to me. Beowawe is a Shoshone word meaning "the gate." It's a gap in a row of hills there through which the Southern Pacific and later the Western Pacific built a tunnel. The Humboldt River runs around the point of the hills and comes through a gap in the mountains. You see it a long way off shortly after leaving Battle Mountain going east, and you can see why they called it "the gate."

Then down by the Hinckley ranch near Beowawe there was a crossing of the Humboldt River known as the Gravelly Ford Crossing. All of the overland wagons used to cross the Humboldt at that place. They're still found there; the spokes, the wheels, and the fellows of the wagons. It's about there that they came in, or a little further east of that where the south fork of the Humboldt River pours into the main river and forms a great meadow there. They called it somebody's folly. I forget what the name of that man was. As they came across the Utah desert, the salt desert, there were no landmarks that they could go by at that time. Some thought that by going a little bit south across what is now Secret Pass, they could save time. Then they came back into the Humboldt River basin later, but that delayed them for a number of weeks. They say that a similar delay was the cause of the great loss of the Donner Party. Just last year (1964) I went up there to help establish a historical monument at the place where they came into the Humboldt Valley. They re-enacted a couple of scenes with a couple of six-horse wagons coming up to that place there with the covered wagons. I believe that was especially written up for the Nevada Historical Society.

Now, my oldest brother Mel has passed away, and my next eldest brother Herbert has passed away. My next brother, Selby, is living in Reno. He's 83. My eldest sister, Lulu, who became Mrs. Goldstone, has passed away; my next sister, Beatrice Lees, is living in Los Angeles and is 91 now and in fairly good health. My next sister, Selma, passed away. She was Mrs. Caro. My next sister, five years younger than I am, is living in San Francisco. She has three sons; one is a doctor and two dentists, and they all just adore her. They're all married, and have wonderful families.



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## MEMORIES OF MY EDUCATION

I don't think there was anything like a library in the town of Wells in the late 1890's, virtually nothing in the way of schools. I went up there in 1897, and there was a grade school there from the first to the ninth grades inclusive. Fortunately, I received a very good foundation for my later secondary school work in San Francisco. I had some wonderful teachers there, and I will be eternally grateful for what they taught me.

All the people in the Wells grade school subsequently became ranchers, or cow-punchers or what not. I don't mean that I was the only intellectual in the school there; we had some. I remember they used to tease me about one girl who sort of took me in hand and made me her pet. She was a great big girl. She must have weighed two hundred pounds! But I was very fond of her, and apparently she was very fond of me. She was a great lover of poetry too, and she helped a lot. But for the most part, I couldn't see much of the other students there. We were out together, we rode together. We had a pasture just below

the top of Wells where we used to keep our milk cows. And in the evening, I'd go down and bring the cows up. Some of the other boys used to ride down with me: we all had horses, of course. And we were good friends. I liked them; they liked me. I think the only fight I had in my life was when one of my classmates threw a rock at my dog and hit him, and I couldn't stand for that. But they were all very likeable.

The experience in school was probably a unique one. We ran into a depression about that time, and the boys took turns acting as janitor. We would go down in the morning and start the fire in one of these old big-bellied stoves, bring the wood in, pile it up, and put the ink wells on top of the stoves so the ink would thaw out, pump and bring in a bucket of water from the well, put it on there and hang the dipper on it. I don't remember any infection that any of us got. We all drank out of the same bucket with the name dipper. People would be outraged with that nowadays, but we got along all right.

There were only two rooms there and I don't remember that there was any great confusion in the classes.

The one thing I learned was grammar. We used to diagram sentences in those days, and we would take a poem ten or twelve lines long and diagram it and then tell the syntax of every word in that ten-line extract of this poem.

I graduated from Wells Grammar School with the help of a group of wonderful teachers. The school was a little frame building; it had two rooms. Teachers who really taught instilled in me the love of literature and the love of poetry. Here in the grade schools we were reading all the great poem, "The Lady of the Lake," "The prisoner of Chalon," "The Lay of the Last Minstrel," and all those great epic poems like "Courtship of Miles Standish," and "Evangeline." They were real teachers. One of them died, (she lived in Sparks) just fairly recently; Louise Lushinco. She had been married since then. Just a year or so ago, I had gone up to Reno to talk to some womens' organization up there and here was Louise Lushinco and we saw each other and just threw our arms around each other. She maintained that she was very proud of me; and I was very fond of her. Maude Dougherty was another wonderful teacher I had, and so was Catherine Honeyman. Miss Honeyman later married Robert Steele of Clover Valley.

I found out when I went to San Francisco in June of that year, that I was way ahead of the people who had graduated from the grade schools in San Francisco. I remember at the same time I was taking lessons from our rabbi to be confirmed. He gave a regular course about Judaism and Jewish history and so on. He was a very brilliant man. His name was Rabbi Jacob Nieto. He came from England. In the class he was talking about

history in general, and how we stopped the Persian march and everything. "By the way," he said, "what were those two battles in which the Persians were stopped?" I popped up with Marathon and Thermopolae. I had just gotten through with that course; and I don't believe anybody else knew about them at all. Of course, ever since then I've been tremendously interested in the Greeks, and Edith Hamilton who wrote these books on Greece. I don't know whether she died or not. I think she was a hundred years old a year or two ago. They made her an honorary citizen of Athens, by the way. She wrote a beautiful book on Greece.

I took Greek and Latin at Lowell High School; it was a good classical high school with wonderful teachers. C. C. Young taught me Latin. He later became Governor of California.

A man by the name of Morton was the principal. Bones Horton, he was called. A Miss Hodginson taught us Latin, and Mr. Crofts taught us math. Mr. Schmidt taught us mechanical drawing. When we came out of Lowell High School, we didn't even have to take an examination to get into the University of California, Lowell was so highly accredited. I came out of Lowell with a good liberal education, I think. It was as good a liberal education as many people come out of college today. I have kept up with my Greek and I have kept up with my Latin, kept up with my English and my German. I didn't take any other language, I'm sorry to say.

Now my wife and I are studying Spanish at home. She took a three-year course in Italian. Our son was stationed in Italy for Western Electric Company for four years, and as might have been expected, he fell in love with an Italian girl and married her. She couldn't speak any English, and so my wife

had an Italian to talk to. My wife is bilingual. fluent in English and in German. She knew German before she knew English, so now we're studying Spanish together. My son is fluent in German, French, Spanish, and Italian. I'm very proud of him.

There was a group of people at Lowell who knew they were going to California, a group of people who knew they were going to Stanford. That was the division out of Lowell; they were going to California or Stanford. Sam Hellman was a classmate of mine at Lowell and at the University of California. He wrote for the *Saturday Evening Post*, he became rather famous. Walter De Leon was another one; he wrote stories in the *Saturday Evening Post*, and he wrote on our Senior Extravaganza which was to be published in 1906, and was to be put on. I wrote a lot of lyrics for it, but, of course, everything was off because of the fire. A number of classmates that went to the University of California made great records there too. We were in many courses together. English and Old English, and English literature of various kinds, and various stages of English literature. I remember one prof who gave me a C in English, because he had us write an essay comparing the poetry of Wordsworth to the poetry of Pope. I greatly loved Wordsworth and I never got over it. I had no use for Pope, and I called him a rhymster. He gave me a C for that; he was very fond of Pope. But outside of that, English was a series of A's and B's.

Then I had a minor in German and I had a wonderful prof in German, Professor Putzke at the University of California. We would correspond every Christmas, and exchange a few letters. He was a wonderful fellow. He got a hard deal over there. He was very popular with the students, but he wasn't an aristocrat. There was another man in the German

Department by the name of Schilling. He was an aristocrat. They took Putzke off as head of the German Department, and put Schilling in. I don't know why they ever did it. We all felt terrible about that, all of his German students. He loved his work. He used to say, "I want you to love the beautiful German language, but I've got to cram it down your throats like corn down the geese's throats in Germany!" He used to get so worked up!

Then after the fire about my whole family went up to Wells. Nov that's 1906, the earthquake and fire of 1906 in San Francisco. That was the year I was about to graduate from the University of California at Berkeley, but this was April and I wasn't going to graduate until June. So that whole graduating class was sort of on extension or probation until the professors could catch up with them and find out if they were able to graduate. That was all pretty well accomplished. The ones entitled to graduate did. I remember I was all up in my courses except a short story course in which I got one unit for each 1,000 words I wrote, and the limit was 5,000 words. The most you could get was 5 units. And Professor Hart, whom I will always remember with such affection was finally coming through Wells, and I arranged to meet him at the train. I think I rode up as far as Montello or possibly Ogden with him and I gave him a lot of drafts I had of short stories that I hadn't finished yet. And he passed me on those.

Then I spent three years at Hastings. The man who later became the mayor of San Francisco, Edward Robs on Taylor, was the principal at Hastings at that time. He was a peculiar chap. We had a good faculty there. I came out of there with a good preliminary education in the law, if you can call it that. Also, you can see the standing that Hastings Law School had. Graduates of Hastings were

not compelled to take the Bar Examination to be admitted into California, so I never took an examination to enter into college. I never had to take the C. E. E. D. to get into the University of California. Nor did I have to take an examination to get into Hastings. Then I came here and was admitted to the Bar in Carson City. I was first admitted to what was called the United States Circuit Court in San Francisco. It is now called the United States District Court, Court of General Jurisdiction.

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## THE SAN FRANCISCO EARTHQUAKE AND FIRE

I mentioned before that, as they used to say, the earthquake graduated me from the University of California in 1906. I was running an average B while I was there, so I wasn't worried about my graduation.

The earthquake there rolled my bed out to the middle of the room at Berkeley. The steins started falling off of the shelves, the pipe racks were rattling. There was an Englishman in the house, and I can remember him yelling out, "Stand under a doorway, stand under a doorway," which was his protection against timbers falling under the arch of the doorway. This was, I think, at 5:15 in the morning. My roommate and chum and I grabbed our hats. All I had was a "senior plug," one of those little hats that we used.

We went down to the depot and caught a Key route train, it was an electric train. We got as far as Shell Mound, and the power gave out. That was Western Pacific. Suddenly a Southern Pacific came along with one of its steam engines, and we got on that train.

At the pier in which we pulled in, the mall was burning. That was after we got on the ferry

boat and got across the San Francisco side of the moat. The pier was burning as we came in.

We started walking up Market Street. The inside Tracks, which were the cable car tracks and built on the cable that case through the top of a V-frame and all cement between, were all loyal yet. But the outside tracks which were the horse car tracks—the Sutter Street car case down Sasome and Sutter Street and they put a team of horses on to go to the rest of the distance down Market to the ferry. Those track. were all wavy. They all had just about two foot waves in them all the way up Market Street. As we walked up Market, we could see flames going up from buildings on both sides of the street without any water being turned on them at all. The mains were broken there.

I had a nephew who had just had a tonsillitis operation at the Morris Hertstein Hospital (Hertstein was a well-known doctor and physician), and I wanted to see him, so I separated from my chum.

He wanted to walk up Geary Street to his home. He was a grandson of Cusp of the old S & C Cusp Company, a famous and

longstanding business of arts there. They used to go over to Europe every year to buy works of art. Their store next to the Golden Rule on Geary near Kearny had caved in, one floor to another, from the fourth to the third to the second to the first, and all of those tremendous things were destroyed. He lived on Geary near Goff.

Well, I walked up to Sutter Street and found out that everything was all right. I walked to sty home on Goff between Post and Geary, and met some of my relatives. My brothers were all in Wells. My mother was out at one sister's home on Fillmore and Sutter. I remember I watched the fire burning up tram Market coming west, and you could see what was going to happen.

Two of my sisters did some very good work in oils. One of my sisters, Selma, Mrs. Caro, did that scene of Othello telling of his adventures to Desdemona' a father, and she's sitting there with a rapt expression on her face looking at Othello. It was a beautiful thing. It was a large, large painting. I ran my knife around the edges, cut it out and rolled it up to take it. I thought I was going to save something. Later, when the house hadn't burned, my sister gave me the dickens for cutting that out of the frame. She always maintained that she didn't, but she did all the same. Because I cut that picture down, the frame had to be recut, and everything.

My uncle was living out by the Affiliated Colleges out on Masonic Avenue. After my sister, Mrs. Lees, left her place, we all vent back there on Masonic Avenue. I came back to the house there and watched the fire coming and coming, closer and closer. My mother was there then. The police finally told us we had to evacuate. We left there. My mother wept bitterly. That was the house in which I was born in San Francisco, the house that my father had built for her. I remember how

proud he was one day when he came home and laid down on the table the mortgage from the Hibernia Bank which allowed him to build the house. The house was clear. So she and we hated to leave, but we did.

The fire got up to Van Ness and I helped stop it at Van Ness Avenue. I was on the top of the old hotel on the corner of Van Ness and Gory. I think it was the Metropole. I took down some blankets and soaked them in water and kept the fire from going across Van Ness Avenue, to catch these buildings on the north side of Van Mess. The fire went north on Van Ness Avenue, way up to Sacramento Street across Franklin Street, and came back between Franklin and Van Ness to the corner of Sutter and Franklin. So it was just one city block through to where our home was. I had walked down there. A cousin of mine was at the house, and the two of us walked down there. They put us on the end of the hose. The soldiers had bayonets fixed, "Fight fire, down there! Fight fire!" And that was a tremendous job to hold one of those hoses with the pressure.

Finally, they dynamited three houses on that corner. The house seemed to rise about one toot and then settle down just into a mass there. They did stop the fire there and saved our house.

Now that whole district is a part of an urban rehabilitation district. When I saw it last several years ago when I was in San Francisco to visit my people, I told the taxi driver to drive out Geary Street so I could take a look at my old home. Everything was razed to the ground from O'Farrell or Ellis Street up to California. Everything was flat, and that was the way I saw the city the third morning of the fire. The smoke had settled and I walked down, one block to Franklin Street and looked on over that city. I could almost cry now that I think of it. That disaster was terrible!

Finally, we all left to go up to Wells at that time. we managed to get a team and load some things on it. We went down Market Street to the ferry. It was like going down the bottom of a narrow canyon. All of the debris of the buildings that had burned had fallen in on Market Street from both sides, and there was just one narrow track to get down Market Street to get to the ferry. Then a peculiar incident occurred. the Southern Pacific Company was issuing tickets to anyone to get out of San Francisco who wanted to, so they gave us transportation. We went to Wells. That was three of my sisters, I, and some of our relatives. We went up there and stayed there a number of weeks or months, I don't remember how long. My brother and I stayed. The others went back to San Francisco.

Then I saw an article in the *San Francisco Chronicle*. They thought it was rather a remarkable thing my brother had sent the Southern Pacific Company a check to pay our fares, but we didn't think there was anything strange about that. We thought it was very kind of them to advance the fares. In the first place, nobody had any money and they made a big fuss about that. Apparently the Southern Pacific Company took it to the newspapers. The second day of the fire down there when I was at home, my cousin and I were lying sleeping on the floor of the parlor (the old houses had a front parlor and a second parlor) and my brother drove up in a car from Wells. It didn't seem strange to see him at all, he just came up. I said, "When did you get in? He said, "I got in early this morning, and I managed to get a car, but the police just commissioned me and the car to haul dynamite. I've been hauling dynamite around San Francisco all day." He went back when the rest of us did; back to Wells.





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## MY YEARS WITH THE BENCH AND BAR IN NEVADA

I practiced in San Francisco from 1909, when I graduated from Hastings Law School until 1913. And by that time I had cases pending in San Francisco and cases pending in Elko, and I was running back and forth, I just had to make up my mind to give up one of them, and I had always intended to come to Elko to practice. So I finished up my San Francisco business and went to Elko and opened up my offices there. That was in 1913. I had a very, very interesting and lucrative practice there at Elko.

There were many interesting mining suits, many interesting irrigation suits, so I sort of specialized in mining and irrigation. Then when the Secretary of the Interior was put in charge of all the public lands under the Taylor Grazing Act, we had a lot of litigation over the public range in the State and in the federal courts. Then finally, I argued what was as the Taylor Grazing cases before the United States Supreme Court. I was appointed to argue the sheep and cattle feuds for many years. They were pretty rough times, and pretty rough litigation.

The railroads contained much of the land and sometimes the purchase of railroad land was too great a thing to finance. So the cattlemen ended with large railroad leases for their lands, for which they paid various sums running up to six, seven, eight cents an acre. The railroads insisted that you couldn't pick out a section here or a section there as you wanted. There would be so many thousands of acres a rancher had to lease, and when he bought, he had to buy so many thousands of acres. This land was in what is called the "railroad limits." The railroads were given all of the odd sections for twenty-five miles on each side of the right of way so that there was quite a contest on to get these railroad leases, between the sheepmen and the cattlemen.

Now the only relief one could get was this: A cattleman whose cattle were called "free commoners" could range out wherever they wanted to, and weren't liable for trespass if they got on someone else's land. Sheep, however, were herded, and if they were herded on your land you had a right to sue for trespassing. So we had many trespass cases

there. Under our trespass statutes, you could recover. While your damages wouldn't be very great, you could recover as costs and attorney fees sums that would amount to considerable amount of money.

For instance, here's a herd of sheep. A cattleman would phone me, "So-and so's sheep are on my land." "All right, I'll be out with a surveyor." (Our famous surveyor out there was Charlie De Almond. He's deceased now.) "I'll bring Charlie De Almond up with me in the morning, and you come out, and get a couple of other witnesses, so we can observe the sheep tracks on your land, observe how much of the land they were on, how long they were on there. If you can, know where the sheep are now." So we would know here's a whole band of sheep— maybe two thousand sheep—on a piece of land; maybe a section or two sections of land.

So we would sue, and attach by statute for that kind of damages. While, we wouldn't attach a whole band of sheep, we would attach maybe a few hundred of them; bring them down to the sheriff's office. The sheriff would go out, and the sheriff and the deputy would drive these sheep down to Elko and put them on pasture there. And there wasn't any question about getting a judgment. The proof was conclusive in most cases, so you got a pretty large judgment. And the sheriff's fees were enormous on those things. His mileage was enormous besides the fees, so a sheepman would be taught a lesson that he would learn pretty well and he didn't repeat it. This was the only refuge that the cattleman had. That practice continued almost continuously until I quit my practice and went on the bench.

There were some notorious range hogs. In one case, we actually put some men on the range—some riders—to run the sheep off the range, which we had a right to do. They were

on our range and we had a right to run them off of there. In one case, I had a client with a little boy horseback riding there. There were three brothers and a brother-in-law of this notorious gang of range hogs and they came up to this boy on the range. One of them grabbed his bridle reins, pulling him, and the other beat him with a buggy whip. They drove up in a buckboard, cutting great big red welts across his back through his shirt and saying, "Why don't you pull your gun, kid, why don't you pull your gun?" If he had, they would have shot him there. In the suits that we had, nothing was beyond them, they were guilty of perjury, and subornation of perjury, and buying witnesses, and buying juries. They are all dead now, I think. They were the O'Niels. I have no hesitation at applying those epithets to them.

In many cases, the testimony was that they were standing together in the middle of the street in Wells. So-and-so came up to one and made these various admissions. Each one would collaborate the other's systems; "Yes, I heard him say it." So they won that case by testifying that this fellow admitted that he was wrong. Sometimes there were the three of them. They would all testify to something. When they wouldn't, the employees would testify to it.

They came into Elko County after they had been run out of White Pine County for some improper conduct; for stealing cattle or horses or something. As they were being taken to the Wells jail, somebody shot at them. My father was a great stickler for fair play and justice, so he went on their bond so they would be released. He said he wouldn't stand for that kind of thing in Wells. My oldest brother told me that he only had one thing to criticize my father for in all his lifetime, and that was the time he went on O'Niel's bond. According to their later actions, (I'm not

supposed to criticize my father), I think he made a mistake in his zeal for fair play.

I had Mr. Gheen as a witness in one case in one of my water suits and he told of someone going up the creek. He said, "Where are you going?" "Oh, I'm just going up the creek." And Mr. Gheen said, "I'll go along with you." He had his gun. This fellow Gheen said to me "I knew he was going up to turn the water and I was going to see that he didn't do it. It was kind of spooky walking behind, and me there with a double-barrel shotgun cocked. Well, I was ascaresd of him," he said, "and so I just kept coming. He went up and I kept coming up behind him" I said, "Did he turn the water?" And Gheen said. "No, he didn't turn the water." He didn't tell us what happened.

There was another grazing suit. Under the Grazing Act, if you let the other fellow graze on you land without opposition, you were in weaker position than it you opposed it. And I knew one of the predecessors who wouldn't let me use his name and he wouldn't take the stand. He told me the story of how he went up there and this sheepman (he's dead now too and so is the witness) was at his tepee there. "I told him that he was on my land and had to get off. He started to move over to his rifle. A twenty-five or thirty-five carbine rifle was leaning against the edge of his tepee, and he started to move over toward it. I said, 'don't you move another step toward that rifle.' He stopped." Th. cattleman said, "I sure was glad he did, because I've never shot a man. But I would have had to shoot him then. I never came so close to having to shoot a man in my life. I don't enjoy the recollection and I wish you wouldn't ask we about it." I was anxious to show that he had resisted the sheepman. So he said, "I'd rather you wouldn't call me." I said, "Well, I don't think it's esential." And I didn't.

This sheepman was a notorious "range bog." On cross examination when he was on

the stand, I said, "Now, all this territory that we have been talking about (there was a big map on the courtroom wall) from Mary's River on the east, to North Fork Mountains on the west, and from the North Fork Mountains there down to the Humboldt River is there any territory, any range that you don't claim?" "No, I claim to go anywhere." Well, it just pointed up the unreasonable point of view and we got a judgment enjoining him from approaching our range. That was just typical of the many sheep and cattle suit..

I wasn't involved in many feuds between cattlemen. I know at one time clients of mine had grouped together to lease a lot of Southern Pacific lands north of Carlin. There was another man who had his ranch on the Humboldt River a few miles from Carlin, and he used to turn his cattle out on these same lands, but he never would pay any portion of the railroad lease. So they asked me what they could do about it. "Well," I said, "you can remove his cattle from the land. Just move them off. You have no right to haze them off or run them off to injure thorn in any way, but you can run then off the land there. You have the right to do it." They said that's all they wanted to know. I knew very well that they would haze them off, but I was very, very careful to advise them that they couldn't do that; and they did. They had quite a day. They hazed those cattle and ran them way back to their home range, kept them on the run all the time.

I had a number of cases of cases involving the running of irons, the brands of cattle. There was a what we called the U-7 iron and there was a iron and you see how that was run over that. We had quite a tussle over that changing of irons. A bench iron like that was changed to an H. And there was a prosecution on that case. It is very difficult to run the iron where the remains of the first iron are evident.

The two little dots on the end of the “bench” there were quite evident, especially when you had roped the animal, tied it down and shaved the hair off. Then you could see the impression of the brand burned into the hide there. It almost always shows up, one blotched over the other a little bit.

My father’s iron, originally, when he bought a ranch in Star Valley in the early days, was a B. A. T. and the A was an open A without the cross in the middle of it, but a T across the top of the A. Well, it was a clever arrangement to spell Badt, but you could see where these sharp corners came in. It was always blotched; it wasn’t a good iron. The U-7 was an ideal iron except that it was so simple that it could be used for another iron. They were all curves and no blotch. My brother had the U-7. They also had the several of the brands around, like the 77. There used to be a 77 with a bar under it. And they had a couple of other irons, but mostly they used the U-7 brand.

It was almost impossible to get a conviction of a person because of cattle stealing in Elko County. Almost invariably, the juries would acquit or they would disagree.

How, I never practiced any criminal law so I never joined as a prosecuting attorney on behalf of my clients or to defend any criminal case. But they had someone on one of the ranches close to Deeth. My client was pretty sure that the man was stealing his cattle. And so we had a calf running with its mother on the range there and he branded the calf in the ear. Sure enough, the calf shoved up in the other fellow’s bunch. My client had a clear case and had him arrested and prosecuted, but the jury wouldn’t convict him. They thought he was trapped, and they wouldn’t convict him. And I don’t know of any more until recently. We had a case come up to our court where a man ran off a mall bunch of sheep. They were found in his possession and he was convicted

of grand larceny. He appealed to our court, and we affirmed the conviction. But that was the first conviction that I knew of. We did have another case eight or ten years ago. Ted Carville, the former Governor, defended him and he was pretty bitter about the case, I know. We affirmed the conviction then.

I believe the first night that I got to Wells I heard my two brothers speaking about this one thing that had happened on the Sparks-Harrell Ranch. Fred Gleason and Diamondfield Jack Davis were arrested for the killing of two sheep herders out north of Montello. I think it must have been over near the Idaho line. The story going around is that Sparks almost went broke in defending those two men. I think Gleason got off and Diamondfield Jack Davis was convicted. (I’m not quite sure of that.) Now I ran into Gleason many years later up on Spruce Mountain. Some of the people up there had tried to jump some of the claims, and he was undoubtedly there to see that nobody went on those claims. I got an injunction against any interference in doing location work on those claims. I went up with my client and the sheriff. Gleason was down there at the bottom of the canyon, with his gun over the hollow of his arm. We served him first with the papers that neither the defendant nor any of his servants or agents or employees could interfere with us. We were up on the side there about hundred, hundred and fifty yards away, just a perfect shot for a fellow with a deer rifle, you know, perfectly aimed and everything. He would look at us, and look at this paper and look up at us. He was in terrible quandary as to what he should do. He was undoubtedly under strict instruction not to let anybody get on that ground. But we went about our business. We completed our location work, came back and he didn’t do anything.

The Indians became quite a part of my life. Many years ago, I was retained to defend an Indian who was charged of having game in possession; too much game or gain. out of season or something like that. I defended him on the grounds that there was a solemn treaty between the Shoshone tribe and the United States of America, a treaty between two sovereign nations in which the Indians agreed to give up their roving habits and live on a habitation, reservation, and the Government agreed to pay them a thousand dollars a year until they had paid them a hundred thousand dollars. Anyhow, the Government had never kept its word and I claimed that the obligation of the Indian to give up his hunting habits and everything else was not operative at all; and he had the right to hunt wherever he wanted, and to fish wherever he wanted. The district attorney produced a case decided by the United States Supreme Court called *Race Horse vs. US* in which the United States Supreme Court said that despite this solemn treaty between the nations, (this was an Idaho case concerning the Nez Perce Indians on a treaty between the United States and this tribe of Indians giving certain rights) that when Idaho was admitted to the Union on equal status with the rest of the states, that included its hunting and fishing laws, and that it took supercedence over the treaty between the United States and the Indians. But anyhow, they didn't put my client in jail despite the fact that I didn't have the law on my side.

The Shoshone case was an interesting litigation which I was in a great many years before I went on the bench. That was some eighteen years ago. Then I had to give it up of course, and let it be carried on by other counsel. In 1863, the Shoshone tribe entered into a treaty with the United States of America. It was a treaty between two independent nations. The Shoshones agreed

to give up their roving habits, and to accept residence on a reservation to be established by the Government within that territory, to allow the territory to be opened up for exploitation, mining, settlement, ranching, cattle raising, and all that. The Government agreed to act up this reservation within the territory of the Shoshone nation, and to pay the Shoshone a hundred thousand dollars in twenty annual installments of five thousand dollars each. The Government was also to give them a herd of cattle, and they gave them some trinkets and so on. Well, the Government did establish a little reservation in what was known as Carlin Farms north of Carlin in Elko County. But it was a shallow valley, shallow soil. Nothing could be done with it, so that was given up. So they established another reservation up at Owyhee, but this was outside the boundaries of the Shoshone territory. It was north of the extreme northern territory. The territory was established by Indian names, Onegogawna, Pahnobe, Weturga,\* and so on.

At one phase of the litigation, the Commissioner of Indian Affairs asked me to come to Washington. The main point that he wanted to establish was that these boundary points of the Shoshone nation were definitely fixed and could be fixed on a modern map. Well, we went in there and showed them that. We had a hearing by the Senate Subcommittee of the Public Lands Committee of the Senate in Elko, presided over at that time by Senator Patrick McCarran. We put on a lot of testimony there establishing the fact that the Owyhee reservation was outside of the Shoshone territory. A descendent of Chief Temoke, who was the chief at the time this treaty was signed, testified that Temoke had

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\*Mr. Badt was unable to check these names for correct spelling.



said at the interview at Ruby Valley, "My people won't go up to this reservation; I can't take them up there. On that new reservation there are strange Indians, strange chiefs, strange customs. You move my country, then I move my people. Up there are new tribe called Tasawee, white knife Indians, not Shoshones. We can't go up there."

And then what happened was that some five hundred head of cattle which the Government had given to the Shoshones were taken away from them with the help of some renegade Paiutes, the same tribe which the Shoshones had help run down in northern Elko County, at the time when these Paiutes were on the rampage. I asked them (this was Chief Temoke's grandson, or Chief Temoke's son, I think), "You had plenty of Shoshones there, why didn't you stop them from taking the cattle?" And he said, "No, I say you hide your gun, I hide my knife. No fight." They were true to the terms of their treaty. So they took the cattle away from them.

All of this time, in the start of litigation, long before the establishment of the Indian Claims Commission, I was seeking to get from Congress what they call a jurisdictional act; that is, an act permitting us to sue the United States in the court of claims, waiving statutes of limitation, and permitting us to go into court for relief. However, after lots of correspondence and many attempts on the part of our senators and congressmen to get that jurisdictional bill, the Indian office and other officials came to the conclusion that our original theory of the suit against the United States was a wrong one; that the theory should be that the treaty between the two nations was simply one of peace and friendship, and not a treaty of cession.

The Indians had never ceded the land to the United State. The United States had taken the land and the Indians had never

been paid, and they were willing to give all of their assistance to that theory for action for relief. So finally, that was filed before the Indian Claims Commission. A great deal of testimony was put in, some by actual testimony, some by depositions. We showed that the Shoshones were an indigenous tribe, that they had claimed the land exclusively, that they had resisted an encroachment on it, that they were a political unit, and actually occupied this land. The Government attempted to show that they were roving tribes, they had no actual possession of the land, and that other tribes had come in, and so on. We had professional anthropologists to testify, and other experts. It was briefed out, and finally the facts were submitted and our findings were accepted by the Indian Claims Commission. The Government's findings were rejected. The court held that we were entitled to relief.

Where were two elements, however, not finally decided, and that was the extent of the relief. This depended on the date of the taking and the value of the land at the time of the taking. That was still undecided. There was a meeting set for July, 1965, in Elko, in which the Shoshone tribe will be asked to vote to borrow Lands, which wider the statute they are permitted to do, to bring in additional experts to pass on these matters. I've given my opinion to our Washington attorney in the thing. Even from my own knowledge as a boy, I know that the large taking of lands in Elko County, for instance, was subsequent to the building of the Southern Pacific Railroad, which was in 1869. The Western Pacific was not built until 1907, if I remember correctly, and it was therefore in the '80's that the land was largely taken up. I think we would be satisfied with fixing the date as around 1880, perhaps a little earlier. Now the Government is interested in fixing a much earlier date,

because the earlier the date, of course, the less value of the land. The land has been increasing in value right along.

One of the peculiar things when we were trying to get the jurisdictional bill through Congress, was the fact that the Commissioner of Indian Affairs and the Secretary of the Interior, under which the Indian Affairs Commission is, insisted that in our claim for relief we should claim interest on the money. Well, from 1863 to date is over a hundred years, so that even interest at 4% would be 400% of the original claims. We knew that Congress would never submit to that. The Indian commissioner would agree to nothing less. And that was one thing that killed our bill. We were killed with kindness.

Well, that's the way the thing rests now, except when you read in the papers now the claims of certain groups of Indians, they're really a descendant group. Some say they don't want the money from Congress. They want to be restored to their original rights, but of course that's impossible. If they're restored to their original rights, they would get all the cities that were in the territory. All along the Humboldt River was their territory; public buildings have been erected. The only way they can be compensated is in money. But that is no part of the attorney's concern. That is up to the Government and the Indian Affairs Commission Department as to how they should be paid, whether it should go into trust for the tribe, or the money go to the tribe or money go to individual Indians or so on. That's a matter in which the attorneys need to intercede.

There is still quite a descendant group who want nothing other than their original rights. "We want to be able to fish and hunt at any time of the year, irrespective of the seasons, and we want to be immune to the payment of taxes." and so on. "We also want to be restored

to our possession and use of our original lands. Well, of course that can't be done. I tried to explain that to them. Some of them just can't understand it, or won't understand it.

Now there's another thing going on that I don't know much about. There is an Indian who claims to be representing the entire society of the Indians of the United States and their rights. He's claiming that under an old statute, Indians are given a general right to file on a hundred and sixty acres of land for each individual. And he has come to Nevada urging that the Indians do this. He claims that the Department of the Interior, the Bureau of Land Management, has refused to recognize that right on the grounds that there is no one hundred and sixty acre parcel of land left in the State of Nevada owned by the United States on which an Indian can support himself and his family; that there is no one hundred and sixty acre parcel of land on which two head of cattle can be sustained throughout the year. So he says that none of these public lands are available for these Indian filings. From what I've seen in the paper, he asserts that he filed a suit based on that claim against the Government and against the Bureau of Land Management to compel them to recognize a filing. He got a decision in favor of the Indian in Oklahoma, I think. How far that has gone, whether it's subject of appeal or not, the article didn't say, but on the strength of that judgment that he got in a federal court in Oklahoma, he is urging Indians to file here in Nevada. And several have already filed. Now I don't make any brief in favor of the bureau of Land Management. I have had many conflicts with them; I've disagreed with them on many, many issues, and whether they are wrong in this case or right, I don't know. I haven't made any investigation, I never even read the act under which these Indians have applied. It's

not my business and I don't intend to dig into it at all. It's an interesting development.

I did attend last year a meeting of the representatives of all of the tribes of Nevada. A very interesting meeting was held in Reno for two days, and I was able to attend the second day's meeting and to see what was going on. All of the Indians expressed themselves beautifully. Some of them were very well educated Indians, and they expressed their feelings in good idiomatic English. In many cases, they complained about the lack of communication between the Indians and their own attorneys; that they didn't know what was going on. While the attorneys did report to the various councils of the various tribes, there was a lack of communication between the councils and the individual Indian tribes, so they didn't know what was going on at all. There was a lot said about that lack of communication, and probably a lot of it was justifiable, however, I think that was pretty well ironed out. The meeting ended in a fine spirit, and I think that they are better unified now than they were before, and something may come of it.

So far as the Shoshone claims are concerned, they involve twenty-four million acres of land, so that's a lot of land. It will be interesting to see how these two finally shoot out of sight. I did a lot of research on this Shoshone case. A lot of the ground research was done through interviews of the Indians. We would have meetings in my office and they would explain the circumstances in very picturesque language sometimes. One man told me that he saw the first horns on the other. That is to say, they had a horse and an ox drawing the wagon. I said in their terms that, "I hide my knife, you hide your gun." He said he was a little boy when the white man first drove up. He had long white whiskers.

The little boy hid in the willows. He thought the white man was going to eat him. The whites were some kind of monsters to the Indians at that time. I had one Indian after another describe the boundaries of the land, and what the names of the boundaries meant, and where they were, and how the Indians claimed the ground, and how the Indians resisted encroachments from the other tribes. They were in conflict with the Goshutes to the east of them, and they were in conflict with the Paiutes. But they always claimed their territory and resisted any encroachment. In a way, there's a lot to what the Indians say.

We had the general litigation of the Humboldt River in the matter of determination of the relative rights of the uses of the appropriated water from the Humboldt River and its tributaries. Its meandering course ran better than a thousand miles from its origin in Wells down to the Humboldt Sink, with priorities ranging from about 1862 to the '80's and '90's, up to the time of the pausing of the first State Engineer's act. That act provided that a person couldn't appropriate water without first making an application with the State Engineer. It wasn't until recent years that they provided the appropriation of ground water: that's quite a problem now.

The appropriation of water from the Humboldt River had many complex theories that varied from one Engineer to the next as to whether you could be entitled to divert water when there was water in the stream, to divert it in accordance with the river flow, or whether you would exercise the right in accordance with the estimate of how much flow there was going to be. Dr. J. E. Church of the university of Nevada, famous for his snow surveys, would measure the depth of snow on the various mountain ranges and the water content of that snow, and then decide



whether we would have a normal year, fifty per cent normal, or twenty per cent normal, or what; never above normal.

Then George W. (Molly) Malone became State Engineer. He determined that the order could be devised strictly in accordance with the estimate of the flow. So even though the river was flowing a full stream of water, or even overflowing its banks, an appropriator with a later appropriation was not permitted to divert the water if the estimate was that it would only serve priorities earlier than his. When later Alfred Merritt Smith came in as State Engineer, he abandoned that and after a long hearing we had in a district court, it was decided to appropriate water and divert it in accordance with the river flow. According to the first theory, if a man had an 1880 priority, and the State Engineer had decided according to the estimate of the rate of flow that it would only serve priorities up to 1875, and then it developed later in the season that it would also serve the 1880 priorities, well, you couldn't take the water and put it back in his ditch. It made an impossible situation that actually occurred during some seasons.

Questions of the duty of water included the efficiency of an acre foot of water (that would be one cubic foot per second flowing in the irrigation season one foot on an acre of land) a how any acre feet of water it took to irrigate an acre. Well, that varied from one to six or seven acre feet. For each district you had to determine how much water, and what the duty of the water was; how much water it took to irrigate an acre of land. If I handed you a copy of the Humboldt River decree, it would be six or seven hundred pages thick with the names of all these people. Some were the very early settlers. Some are recorded in our very early decisions such as *Bliss vs. Grayson*. Those are oldtimers there. There

were other early cases. I could never recall the names of those cases, or what the holding was in all of them.

We went back to the earliest days of methods of appropriating water, some of which I saw still being used in Egypt a couple of years ago. In one, you have a big lever dip a bucket into the water, swing the lever around and dump it into the ditch.

Several cases were held over the fact that there was as such thing as having a right to a method of irrigation. You have to use artificial mans to divert the water and appropriate it to a beneficial use on the land. The time was the measure of the right. The earliest in time was the earliest in right. Those were the general rules on which we proceeded, so that in the proof before the State Engineer, each man had to come in and prove the year in which he had first diverted the water and appropriated it to the land. That was subject to a more generous application, because if a man diverted water from a stream to appropriate to his land, and he built a big enough ditch and had the mans, and intended to appropriate that to a whole hundred and sixty acres, and the first year he only appropriated forty acres, and the next year another forty, and then the last forty, he would have priority as of his first appropriation.

And then on one case that I appealed on to the Nevada Supreme Court, the court refused to apply that doctrine of relation because it hadn't been properly pleaded and objections made to the State Engineer's order of examination. A very unfortunate decision, I might add.

They proved these appropriations generally by the testimony of men. You see, these were going on from 1913. so that the old-timers were still available and they would testify themselves. And it was remarkable how

accurate and precise their memories could be. He would say, "Yes, I plowed that ditch with a fellow by the name of Shorty Gallany. Me came there, and we had a bay horse and a white horse on the plow, and we plowed out a ditch from there, and we put it on our forty, and we plowed out a big enough ditch to put it on the whole hundred and sixty. That first year we raised hay on that first forty, and the next...", and so on. Then by a later act of 1889, people were required to file maps to show where, the appropriated water was and where they put it on their land. A lot of those maps were filed in 1889. They were a great piece of evidence on the Humboldt litigation, but most of it was absolute testimony.

What some people call overlapping claims would be each man claimed to divert with an earlier priority. They were, for example, on different parcels of land and they might be stretched as far apart as Wells and Lovelock, so that they were more conflicting claims than overlapping claims. Well, where the evidence was in conflict, the court had to make a decision and would give A priority over B because A appropriated a year before B did; B couldn't divert until A was satisfied. That went all through the adjudication, so that now the final decree lists the names, the date of appropriation, the description of the land on which we put it. the length of the irrigation season, and where the stock watering rights went with it during and after the irrigation season.

We had a case argued to us recently in which there was not only a stock watering right independent at the irrigation right, but there was also a right given for a biennial washing of the alkali out of the soil. That was the first time that that came to us.

There was no corruption, but of course people will always exaggerate their rights. They extended their priorities when they

could, to an earlier date; they extended their forty acres to a hundred and sixty acres, where they could. They always magnified their rights and magnified the amount of land they put the water on. The proof of the amount of land was generally through the amount of hay that they stacked there. Suppose that they cut a ton to the acre, so if you cut five hundred ton you would have around five hundred acres. So they measured the hay stacks. There were various ways of measuring cubic content of hay in a stack. The width times the length by one half the over minus the width; so you see you've got a cubic content measurement there. Judge Bartlett remarked at one time someone was testifying to the enormous stacks they had made; they were twenty-five feet high Those were the days when they didn't have modern machinery to stack it with, and Judge Bartlett said, "Yea, I've heard of this stacking hay in stacks from airplanes and so on. I know how high these hay stacks were."

There was a conflict between the upper end of the river (which had a very early irrigation season) and the low end of the river, because it took a month to six weeks for the water to get down from the upper end to the lower district. One time the State Engineer made an experiment, He put an Indian in a canoe, let him drift down the river, I think to judge how long it took. I can imagine an Indian drifting down by Beowawe there the mosquito country there, and just letting that canoe drift!

There were many exciting mining suits. In one suit, some people had located a number of claims but instead of making them fifteen hundred feet long, which was the limit of the statute, they made them two thousand feet long. In a case like that, they had a right to cast off the excess in good faith, if they found that they had mistakenly taken too much land. But they didn't: they claimed the whole

two thousand feet. So my client claimed the excess on the south, and located across these claims. We had quite a lawsuit over that thing. He happened to locate across those claims through some very rich veins of ore. They contested that, and I was successful in maintaining his right to be there. We finally made a settlement in which he was given the right to all of the ore that he had out, and all of the ore that he could knock down in the mine in the next sixty days. So he put on three shifts there, eight hours a day. He had a tremendous amount of ore knocked down and piled up and everything. And he case out vita a large amount of money on that thing.

He was a man by the name of "Deefie" Alva; he was stone deaf, and I had to talk to him by writing out questions on a piece of paper and then he would answer me; shout it at the top of his voice. He was a terribly hard man to correspond with! The first time I started to answer these questions. he shouted, "What are you trying to do?" He was suspicious right away and I said, "I'm trying to get the facts so I can represent you in this case, but if you have any suspicion then you had better go to a lawyer in whom you can have full confidence." He was then very apologetic and he had full confidence from that time on. I represented him in other mining litigation. He finally died.

Cary Van Fleet was on the other side of the case and we called Judge Averill, a vary noted mining lawyer, up from Tonopah to try the case. Averill claimed that these southernmost stakes extending this fifteen hundred feet claim to two thousand feet were just "fugitive stakes" that had no meaning. Cary Van Fleet was going to appeal the case on the ground that Averill was wrong, that there was no such thing as "fugitive stakes," but he didn't. He was a son of Federal Judge Van Fleet in the United States District Court in California. He was a good lawyer, too. He

was associated with Senator Henderson and a man by the name of Caine: Henderson, Caine, and Van Fleet.

Many of the mining and water cases established precedents like the feature of the fugitive stakes. I remember a water case in which this [State Supreme] Court held that there was no such thing as being able to appropriate waste waters that flowed off of a man's land. A man had to make the appropriation from the stream proper. There were many cases in which we established precedents in water laws and those precedents have been cited in the other western states, too. This question of appropriating water was one of them.

In a case we brought up from Ely, in White Pine County, the State Engineer had given us the right to divert the waters of a stream. My client appealed to the district court there, and the district court reversed the State Engineer, and held that the man below us had a right to divert the waters from that stream. We showed from the earliest witnesses who could testify that before 1880 this stream was the way it was at that time, and gave the appearance of being an old stream at that time. The district judge's decision reversing the State Engineer was based upon theory of his attorney, William Kearny (who was a toner State Engineer and a prominent water lawyer), that the original course of the stream couldn't be there. He said that there was a ridge, and instead of coming down the ridge, it would have flowed down the canyon on either side; that the stream had come clown around a range of hills, and around, and then around in a horseshoe shape; and that he diverted it from the stream. Well, the court said that he couldn't use a theory of that kind, that the district court was altogether wrong, and restored the State Engineer's ruling. And that's in our books under the title, "in re Bassett

Creek”. So that case came up to us again, in a later case when I was on the bench here, and I had to disqualify myself. I’ve had to disqualify myself under other cases that came up on the Humboldt River.

In some cases, the court bracketed the list of lands along the Humboldt River, although the priorities had run from 1873 to 1878, we’ll say. So by bracketing them, it gave the 1873 priority to any of these lands on which the appropriator decided to put in. One came up later to this [State Supreme] Court based upon the final decree that didn’t have the bracket on it. And it was claimed then that the district judge had inadvertently erased the bracket, so that this last one had only a priority of 1878, and not 1873. That conflicted with the adjoining property on the Humboldt River of another man who got the benefit of this late priority. That was awarded, and it came up from a complaint to the district court that the bracket had been erased by mere mistake and inadvertence. And the district judge who did that, I understand, testified in the case that that was an inadvertence— a mere misprint by the court. If it had been an attempt to change his decree, he couldn’t do it. The statute of limitations had run many, many years before. But by claiming that it was just a mistake, that a court had a right to correct its own records, the court modified this decree by restoring the bracket. It came up to me and I knew all about it, so I couldn’t sit on the case,

I will tell about some more of my other cases. We had a lot of cases after the Depression. Men were in danger of losing all of their properties. On one property in Elko County, we had a mortgage to the Northern Nevada Loan Association, which was a representative of the Regional Agricultural Credit Association, a Government agency. That was handled by the First National Bank’s branch in Winnemucca, and they attempted

to foreclose on that land. They put a receiver in charge, the receiver purported to sell the cattle, which were pure-bred cattle, as a whole instead of classifying them—the cows, the steers, the bulls, the yearlings, the two-year-olds and so on—which was the only way you can sell pure-bred cattle, because it makes a great difference. A bull may be worth three or four thousand dollars, a cow may be worth a thousand dollars, a yearling calf may be worth six or seven hundred dollars, and so on. So, the receiver purported to sell them as a whole.

In the meantime, the cattle had been held on the land by the receiver, on my client’s land, where the receiver had no right to hold then because the land was subject to security for a bond issue. And the bond holders were not foreclosing; they were willing to give my client time. So we maintained that the mortgage was not due and we maintained further that the receiver had allowed the cattle to eat up our hay, he had used our pasture for all these weeks, he had depreciated the value of our cattle by trying to sell them as a whole without classifying them, and so on. And strangely enough, I found in the file a letter from a former attorney of my client to the bank saying, “I see you have made the maturity of this note one year. Our understanding was that it was to be subject to two annual renewals. If you want to function this mortgage, it is strictly on that understanding; otherwise, you are not to deliver these papers.” He had signed the mortgage. I found a copy of that in the file and I called on them to produce the original and it was produced in court.

On several occasions on cross-examining their witnesses, I attempted to put this in issue. I knew it wasn’t admissible at this particular time, but this was a jury trial and by the time that I did get it in evidence, the jury was on its toes waiting to see what was in that letter. It’s not often that you can defend a

mortgage foreclosure suit, but I defended that one successfully.

George Wingfield came to me after the jury verdict. And he said, "Let's get the kids out of this case. Lets you and I talk this thing over." And he said, "I offer you [so much money] to call the litigation at an end. You know I'm entitled to foreclose later, anyhow. What's the use of spending a lot of more money? I'll give you [so much money] to call all the litigation, and the appeals that we have, off. You and your client come back here at one o'clock and tell me what your answer is." We came back at one o'clock. There was no way that Wingfield could have known that we were about to reject his offer, but he said, "Before you say a word, and I don't know what your answer is going to be, I want to raise my offer." He raised it by a very material amount and I said, "Well, Mr. Wingfield, we came here to reject your offer, but now without retiring further with my client to consider it, in view of your fairness, I'm going to recommend that he accept it." We accepted his offer. That ranch was reinstated and divided into four parts. We got a Joint Stock Land Bank loan on each one of those parts. These people reinstated themselves and became wealthy. I don't want to mention their name because they are still living.

There was a similar case in which we had the mortgage to the First National Bank for a very large loan. I think it was close to two hundred thousand dollars. Out of that loan, we had held a group of cattle by a particular brand— I think there were three or four or five hundred head of cattle of that brand that we had held out of it. The bank's attorney from a very prominent firm in Reno (here I was, a little country lawyer up in Elko) kept calling me up, "Why don't you just throw the cattle in with it?" That was what the bank was demanding. They would give us a year's

leeway if we would throw these cattle into the mortgage. I said, "No, if we throw the cattle into the mortgage, we might as well give them to you now because we're not going to be able to pay this off in a year. You can foreclose then and take them." They kept telephoning, "Can't you get your client to throw those in with the mortgage?" I said, "Positively not." We made a settlement with them. We put a receiver in charge—one of my client's men in as a receiver as we had a right to do, under the statutes. We had a meeting in Reno with the bank's attorneys and he said, "Are you willing to limit the expenses of your receivership? This could be all eaten up." I said, "Of course I am. The main manager in charge is entitled to five hundred dollars a month for his services. We've got a secretary in charge there who's entitled to (I forget what it was) two of three hundred dollars a month. I'm entitled to an attorney fee. You can fix it as far as that's concerned." We had to pay; we didn't have any money on hand because we had filed a suit for receivership, and they in turn had filed a petition in bankruptcy against us. I said, "I'm willing to limit it to that. Proceeds that we get, we're willing to apply to your mortgage after paying expenses. We've got to pay our cow-punchers, we've got to pay our hay crew, we've got to put up our hay, we've got to pay our herder. and so on. And we have to have that money to pay it. And that's what I'm going to ask the court to allow the receiver to pay." So he said, "If you're willing to do that and eliminate your expenses (we didn't want this thing eaten all up) why, we'll go along with you and discharge the bankruptcy petition." And I said, "All right, call your girl in, and I'll dictate the contract right now." I dictated the contract and he said, "That's fine, every word of it. I'll sign it." I had my client sign it.

And that worked out the same as the other one. We divided that into four units. We were



just on the edge of bankruptcy and yet they ran that as four separate units, property under different brands. They did very well. There were two corporations, two individuals, they got along very well, made a lot of money, got on their feet again. That's a satisfaction when you can do that.

And that happened in still a third case. I had a Basque client. He ran both purebred and range cattle, and the bank started to foreclose on him. They had a different attorney this time. He came into my office and said, "I've got all the doors closed this time, every gate is closed. There's no way of your getting out of this one because there has been a lot of litigation before, between the bank and this man." I said, "No, I'm afraid you've left one open and we're out through it already." We litigated that case out there, came out successfully, and eventuated in a settlement. The suit had been filed and we eventually settled the suit. And there were many like that.

I had another involving property down in Beowawe. There are still some of the children living, so I don't want to mention the name; and so is one on the other side. He was getting pretty close to the edge of his credit, and he couldn't run his ranch. It was a tremendously big ranch. He had a friend who was a wealthy stock broker in San Francisco and he entered into a contract of a limited partnership with him, where this man would put in thirty thousand dollars. In this limited partnership, all he was to get back was thirty thousand dollars and interest, and he was not to be liable for any debts, or wages, or anything. Finally, he kept getting in deeper and deeper until he had about a hundred thousand dollars into the thing. Finally the stock broker sent word to my client, who was the owner of the ranch, "Take your saddle and your gun, get off. We're

through." So I wrote to him and said, "No we're not through, we don't do things that way here. You have a partnership contract with my client, and if you attempt to put him off, I'm going to ask for the appointment of a receiver and we'll work this out in court. We'll see how much you're entitled to get out of this." I knew he was very much opposed to litigation, he hated litigation, He was a wealthy man, though. Finally, he gave my client a good many thousands of dollars to get on.

Of course each one of these things involved good fees to me, too. In one of the cases that I told you of, the man came in and signed the check in blank and said, "You fill it out." After I filled it out for what I considered a reasonable fee, he said, "I don't think that's enough." I said, "Yes it is, that pays me for my work." In this case, I got a very good fee out of it, too.

Then I was often on the other side where I represented the mortgagee who was foreclosing. I remember one case when I filed a suit to foreclose a mortgage and I put a receiver in charge. This was a Basque. He came into my chambers to see me. He was the other side, the defendant, I was representing the plaintiff. He sat opposite me at my desk, and he said, "You take my cattle?" I said, "Yes." "You take my sheep?" I said, "Yes." I said, "You agreed in this mortgage not to sell off any of your ewe lambs. You agreed to handle these cattle in a certain way. You agreed to pay the taxes. You agreed to put so many acres into alfalfa. Your herd has gone down. Your sheep herd has gone down; your ewes are getting old, and you haven't sold off your old ewes. You've done none of these things. The only way my client can protect himself is to take this over." He said, "That's the law, you take my cattle?" I said, "Yes, that's the law." And he said, "Well, I'm gonna make my own law."

I be back to see you.” So from that time on, I kept a gun in the drawer of my desk, but he never came back.

I had another Basque client who came up to see me. This was a French Basque. He had a ditch running through the land of another man, and he said the other fellow was breaking the ditch. And I said, “Well, I think we’ll file suit to establish this ditch right. You’ve had it there all these years taking the water through there at your consent.” Morley Griswold was the attorney on the other side. I had a conference with him and Morley said, “Well, that’s all right. I’ll get my man to give you a ditch right through there.” This fellow was very excitable, my client was, and, “Every day I coma to fix the ditch, and this guy he breaka the ditch, and the next day I fixa the ditch and he breaka the ditch.” I said, “Here you’re going to get a right to the ditch in writing just like a deed. You’re getting a deed to use that ditch.” And he said to me, “Oh, I thinka maybe Morley grease, I thinka Morley grease.” I don’t know whether he meant Morley Griswold or whether he was greasing my palm. So I said, “Well, we’re through. If you want anything else, go to a different lawyer.” Then he wanted back part of his retainer, (I think he paid me a retainer of two or three hundred dollars) and I said, “Not one penny.” These were all peculiar cases, they just came back to me. There were scores of these cases going on all of the time.. They were all very interesting, dealing with people all of the time.

I liked George Wingfield and Morley Griswold. We fought hard cases in court but we were good friends otherwise. Charlie (C. B.) Henderson was another. He was not a very aggressive lawyer. He tried to smile his way through a case. I think I’ve outlived all of these lawyers, Charlie Cantwell, Judge E. P. Carville,

who became United States Senator Carville, Otto Williams, Hale, who later became editor of the *Independent* in Elko, Dysart, who later became district Judge in Elko County, Salter, who became district judge in Humboldt County, L.O. Hawkins, who became district judge before Salter in Humboldt County and his brother, Prince Hawkins, in Reno. As to their being politicians, I don’t know. Most of them stayed with the law unless they went on the bench. Of course, Morley Griswold and Ted Carville became Governor and United States Senator.

George Wingfield was strong in politics, sort of a bipartisan control of the politics in Nevada. Many people criticized Wingfield, but I always found him fair in all of my dealings with him. The one case I told of, he was very fair and in other cases he was very fair. His partner, Noble Getchell, was a fine man. That’s where, I think, Wingfield reinstated his fortune—in his partnership with Getchell in the Getchell Mine. One person said to me, “How can you say anything good about a man who goes through bankruptcy and apparently puts all of his property in the hands of the bankruptcy court and comes up a month later owning the Riverside hotel?” I said, “I don’t know how that was done, or what arrangements were made, but I cant believe that there was anything crooked about it.”

Judge C. A. Norcross, who was on the Supreme bench, was slated to be appointed to the United States Circuit Court of Appeals, at the same time William Woodburn was slated to become United States District Judge. I don’t know why he wanted the job, because he was making a great deal of money in his practice. He was one of the foremost lawyers in the State, and his son is in one of the foremost law firms now. At that time, the *Sacramento Bee* was carrying on a campaign against the

confirmation of those two appointments. They claimed that both Woodburn and Norcross had a finger in the pie of the Owl Drug Store bankruptcy in San Francisco, in which the owl Drug Company had, I think, gone through bankruptcy. Some way or the other, they had surrendered a number of leases that they were not able to keep up. The Owl Drug Stores were prominent in San Francisco, and after being forced to cancel the leases, they were able to get back on them all. The *Sacramento Bee* printed cartoons of Judge Norcross and Bill Woodburn dipping their hands in the slime of the profits of the Owl Drug Company Bankruptcy Cage. It was a miserable campaign that they put on. Well, they defeated the confirmation. Judge Norcross was a Chief Justice of this Court, a very fine man. Later, he was on the federal bench, but he didn't get appointed on the Circuit Court of Appeals. Judge Orr was subsequently appointed to that position; he was a Chief Justice of this Court.

On one occasion when the State of Nevada was entitled to another man on the bench, Senator George W. Malone called me up and said, "Milton, would you like to be on the Circuit Court of Appeals bench?" I said, "Sure I would, but you know there's no chance of that at my age." I was around seventy then, and I was on this bench. He said, "Oh, I thought you were much younger than I am." Whether he thought that or not, I really don't know. I think he must have known all of the time; that was just a play. He said, "Who's that other fellow on your court?"

I said, "Charlie Merrill, he is a natural for the United States Circuit Court of Appeals. If there's anybody in Nevada entitled to go to that court, it's Charlie Merrill. He's a wonderful judge. I'd hate to lose him off of this Court, but he sure is entitled to that job." And

he was subsequently appointed. He's doing a wonderful job there now.

My appointment came on Judge E. J. L. Taber's death. Morley Griswold, by the way, was the man to call me up from Reno. He was practicing in Reno then. He said, "I've got a bunch of lawyers in my office who would like to see you appointed on the Supreme Court to take Judge Taber's place. If you want it you can have it." "Well," I said, "it presents quite a problem. I'll have to sell my home in Elko, move down to Carson City. My daughter is just about to go into the senior class, and get all kinds of honors in Elko, and we'll have to move her down there. My son is about to go into college. It's going to be very expensive for me. I have a good practice, and I would have to cut my income in two. I don't know what to do." I went home and spoke to my wife and she said, "I think you would like to take that job wouldn't you?" I said, "Well, everybody, I think, looks forward to getting on the court of last resort in his state. I would, but I don't know whether I can afford it or not." She said, "We'll make out, you go on and accept it." That's the way we've gone through thirty-eight years of marriage together. I did, I accepted that. I took quite a financial beating because the salary here was seven thousand dollars a year here at that time. Finally, it has gone up to where you can live on it, even with the inflationary prices and the devaluation of the dollar. The salary is now twenty thousand, and the first of January, 1967, it will go to twenty-two thousand five hundred, I think. So it's a livable salary now, very enjoyable work.

I've had fine men to work with. I deplore the terrible thing that happened to Judge McNamee. A brilliant man, brilliant mind. We worked together for I don't know how long, seven or eight years together. The last time I saw him, he couldn't even recognize



me. Fortunately, Governor Grant Sawyer appointed Judge David Zenoff to sit with us until the end of Judge McNamee's turn, or until his death if he dies before then. Judge Gordon Thompson is a wonderful lawyer, a fine man to work with, and a fine judge. When we get through with two or three opinions that we're working on now, we'll be current, right up to date, and we can take a vacation now with a clear conscience.

It's wonderful work, enjoyable work. I can't say that I enjoy the criminal appeals. We're compelled to reverse convictions by reason of some of the recent United States Supreme Court decisions which I don't like at all. And I'm not too fond of those hundreds of personal injury cases that come up on appeal. But still the whole thing is very, very interesting to me.

I think we have a fine bar in Nevada. There are a bunch of lawyers who can practice law in any company and I'm very proud of them. They come up here and they give beautiful arguments, they file wonderful briefs, exhaustive briefs. They make it easy on the court; they exhaust the authorities on any point. We now have three law clerks to assist us. Our work has tripled, I suppose, since I went on the bench. We'll be filing this year, more than a hundred opinions, which is a lot for three judges to file in ten months of the year. That's ten opinions each month, which means on the whole, one opinion every week for each of us. It keeps your nose right on the grindstone!

I will tell you about the routine of the court. We have a pre-argument conference. We've all read the briefs, and we've all looked at the records as seems necessary. Before the argument we discuss it briefly and decide how it looks. It's all just tentative, because we haven't heard the oral argument yet. And

after the oral argument (which generally takes from ten until twelve), right after lunch we come in and have a conference again; this is a conference. We discuss the case, and generally we can come to the conclusion then as to how the case is to go; a reversal or an affirmance. We decide, and the Chief Justice assigns the person to write the opinion. Ordinarily they are assigned fairly in route, so that each one will bear his fair burden of the work, although sometimes we just discuss it. Right now with Justice McNamee's incapacity, Judge Thompson is the acting chief justice. We called the calendar the other day for the cases that are now set, set into January. One case was set into February of next year. There will be three or four cases a week for every week from now until next February. Now in one case we were talking over, the case had been argued, and Justice Thompson said to me, "I know you don't like criminal cases, I'll take this one." "Fine." "You take the next one." "Fine." We all are agreeable on what cases each takes. We try to avoid specialties. I'm sort of considered an expert on grazing matters and water matters, and raining matters. Still we try to avoid that; it's not considered good policy for one man to be a specialist in one particular field because that tends toward one-man opinions, whereas our opinions are those of the entire court. We all work on every case. And we work pretty well in harmony; we have an occasional dissent, of course, which is bound to happen.



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OBSERVATIONS

My own personal life in Nevada has been a wonderfully satisfying one. I always felt that I could come to Nevada to practice. I said, "This is my country, these are my people, and this is where I want to practice law." My clients were very loyal to me, and the cases were always interesting. I made a good living at it.

My wife came out to teach school as a girl in Elko in '27. We fell in love and we were married. My wife is not Jewish, but neither of us are particularly church-going people. We haven't had the slightest difficulties arising from the differences in our religions. She belonged to the Lutheran Evangelical Church in Chicago. She was a Chicago girl. We let the two children, our son and daughter, go with their friends to whatever Sunday school they wanted. I know on one occasion my son told us how the Sunday school teacher proved his father from a different religion. My son was asked where Jesus was born, and he said the Egyptian princess found him floating in the bulrushes!

Now my family has always been good Republicans, thank God. I imagine this is

no place for politics, but I'm very much concerned with the consolidation of power in the central government, the loss of power in the states the construction of the certain sections of the Constitution by the Supreme Court which absolutely ignore the Tenth Amendment, which provides that the United States shall have only the power granted to it by the Constitution or that which is necessarily inferred from it, and otherwise the power is reserved to the people under the states. Now they have ignored that in the recent reapportionment decision; and in the present bill, I think they omitted that. Before Congress passed the Civil Rights Bill, the states could actually not only regulate the qualifications for voting for Senators and Congressmen of the United States Congress, but could also prescribe qualifications for voting for state, county, and local elections. I think that the new act is absolutely outrageous. I don't know now whether the centralization of power is so fixed in Washington and the Democratic party that we'll never get out from under it. I'm very much concerned about it. We are

spending billions of dollars that we'll never be able to pay, although Franklin Roosevelt said, "What's the difference, we owe it to ourselves, we buy the bonds." Johnson seems to feel the same way about it, Kennedy felt the same way about it, and Truman.

I greatly admired President Eisenhower, and I hoped against hope that he would not make a political appointment as Chief Justice to the United States Supreme Court; and then he appointed Warren. Warren was a candidate, you see, and he gave up his candidacy for that promise apparently. That was a terrible thing.

On a table in my office is the *Third Merriam-Webster*, which I despise. I always say they ought to put a big sign on the front of it, "The theme of this book is, 'anything goes.'" To say, "Do it like I do" is perfectly proper according to this *Third Merriam-Webster* and everything I'm finding out in this new digression is terrible. They're destroying the English language! We have such a beautiful language, a wonderful language, such a rich language, and the very people that should take the pain to preserve it, won't. Now some of the profs at the University of Nevada—Dr. Laird of the English Department, I love him, he's a wonderful man—but we fight like the dickens about it. He says, "Well, you and I think the same way about it, but we can't stop it." But it's our duty to try and stop it. Sometimes I go through these briefs here—there are briefs piled all around this place—and with a red pencil in my hand, draw circles around grammatical errors on the page. Now, we have a fine Bar here and many of them are well educated people. But on the other hand, there are many people practicing law who don't know the least thing about grammar, or syntax. Like the stories in the paper every day, "He shot at the man, whom he thought was a burglar." Well, those

things are happening all the time in the briefs. I think it's sort of a disease with me, I don't think I'll ever get over it. It just hurts me to see one of those sentences badly "gobbled." I'm reconciled to the disappearance of the subjunctive mood, that's gone forever. But I'm not reconciled to abandoning parts of speech or case or tense or things like that. Here's an attorney arguing a murder case, "lie came in and saw the body laying down on the floor." There's no excuse for that! They don't know the difference between lay and lie, and the difference between except and accept. There's just a hundred of these little things that don't amount to much in themselves, but when people actually destroy our language by promoting them and accepting them as good usage, well, I think it's time to stand up on our hind legs and holler about it!

You see, when I went to college, there were very few girls who went to college and comparatively few boys; a small proportion of the high school graduates. Sometimes now they say, "What's the use of teaching Latin?" for example, or "There's no sense in teaching Latin unless you're going to college, or unless you're going to be a Latin teacher." That is much an erroneous concept! I've always maintained that no person had a perfect command of English who hadn't studied Latin. And of course, for French, Spanish, and Italian, it is a tremendous help. There's a little magazine being published now called *Quinto Lingo*. They publish this little magazine in which they print little stories in six parallel columns in English, German, Italian, Spanish, Portuguese, and Danish. Of course, most of these are IndoEuropean languages and you can see the relation right away. You can see the direction that Latin took in Spanish, and the direction it took in Italian, and the direction it took in French, and so on. It is an intensely interesting little magazine. I hope lots of people get it and read it.

I think a lot of my education developed after I graduated from the University of California. For example, it wasn't until after I graduated that I discovered Robert Browning. I never knew anything about Browning until I picked him up afterwards and I found out what a good poet he was. Elizabeth Barrett Browning and her "Sonnets from the Portuguese" was another favorite of mine.

In high school, we used a text book called *From Milton to Tennyson* and that was a wonderful book of all the poets. Then at the University of California we used *Palgrave's Golden Treasury of Songs and Lyrics*. It was a long time after that that I discovered Shakespeare's sonnets, as a matter of fact. I had read a lot of Shakespeare's comedies and tragedies, but I had never read the sonnets. I discovered later, years later, how wonderful they were, but Wordsworth was always my favorite poet. I think the most beautiful lines of poetry are those last four lines in "Intimations of Immortality," "Thanks to the human heart by which we live/ Thanks to its tenderness, its joys and fears/ To me the meanest flower that blows/ Can give thoughts that do often lie too deep for tears." And "Tintern Abbey" and the "Lucy Poems."

You know some years ago when one of the law clerks graduated I gave him an anthology of verse and I told him. "Sometimes even working on a law case, you'll get more inspiration as to how a case should be decided from a line of poetry than you will from a shelf of law books."

So one's education goes on. Fortunately, I have a wonderful wife who feels the same way about it as I do. We avidly read some of the good magazines and some of the good poetry that comes out nowadays. Some of it I can't stand, and these sexy novels I think are terrible! She was reading *Peyton Place*. She handed the book to me and said, "I just want

you to read one paragraph of this thing." And I read it and said, "Here, take it back, I don't know why you're reading it." And she said, "I don't know why, either." A writer, I used to think, belonged to a wonderful profession, but a writer who will deliberately write a pornographic book just because it will sell and make money at it is just prostituting himself.

My brother used to read Thackeray; Thackeray's novels one after the other, over and over again. We introduced our children to good novels and good poetry when they were just little folks and they loved it too. And they both use perfect English in their speech and in their letters.

The word retirement isn't in my vocabulary at all, unless its compulsory retirement. I've told my associates, "If you ever find me mentally slipping, tell me, and I'll get off." The tragedy of that is the man himself is the last one to know it.

My plans for the future are just to keep on working here. I'm eighty-one years old and I'm not ready to give up!



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## ORIGINAL INDEX: FOR REFERENCE ONLY

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